
MASTERY AND DOMINION:

CARL SCHMITT'S JURIDICAL CONCEPT OF THE POLITICAL

Thomas Moore

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Declaration

I declare that:

- a) that this thesis has been written by me
- b) this work is entirely my own
- c) this work has not been submitted for any other degree or professional qualification.

Thomas Moore

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Abstract

This thesis examines the juridical framing of the political in the thought of Carl Schmitt. The purpose of this discussion is to draw attention to the fundamental inconsistencies that are present in Schmitt's thinking on the political. These inconsistencies arise from Schmitt's desire to advance a concept of the political that can be understood autonomously in terms of the friend-and-enemy grouping. This thesis argues that Schmitt's concept of the political should not be understood autonomously but in terms of a juridical ethic of mastery and dominion. Schmitt's desire to ground the political in an autonomous field of meaning—where the political achieves mastery over all other domains—reduces the political down to a juridical moment. Schmitt fails in his mission to construct an autonomous concept of the political, primarily because theology frames Schmitt's analysis of sovereignty. Moreover, Schmitt's concept of the political presupposes the state and a decisionist discourse of sovereignty. Schmitt's decisionism is expressed in terms of a sublime, symbolising the highest region of both political conduct and knowledge. For Schmitt, mastery and dominion are the core values of the political. This has severe implications for the concept of legality and the democratic functioning of the state. Thinking beyond a juridical formula unleashes political thought from the strictures of both proceduralism (liberalism) and decisionism (authoritarianism). This reflexive approach to the political—present in the work of Foucault, Butler, and Mouffe—allows for the shared regime of mastery and dominion to be critically reformulated. Without the imperative of mastery—the unilateral control of conduct by the subject—political thought is freed from the need to exercise dominion and can focus on the ways in which the subject can be constituted in less exclusionary ways.

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1

Introduction: Dominion, Mastery and the Political

1.1 Dominion, Mastery and the Juridical

This thesis examines the juridical framing of the political in the thought of Carl Schmitt. The purpose of this discussion is to draw attention to the fundamental inconsistencies that are present in Schmitt's thinking on the political. These inconsistencies arise from Schmitt's desire to advance a concept of the political that can be understood *autonomously* in terms of the friend-and-enemy grouping. This grouping has been the focal point of the revival of interest in Carl Schmitt within contemporary political theory. Nonetheless, this thesis argues that this grouping does not sufficiently represent the dimensions of the political within Schmitt's own thought. By focussing on the relationship between the political and its embeddedness in juridical form it is possible to see that Schmitt's concept of the political owes more to mastery and dominion than the friend-and-enemy grouping itself.

The critical claim in the current work is that a juridical understanding of the concept of the political does not sufficiently come to terms with the multiple fields of politics and political action. Schmitt's desire to ground the political in an *autonomous* field of meaning—where the political achieves mastery over all other domains—reduces the political down to a juridical or adjudicatory moment. The content and form of politics becomes irrevocably linked to the moment of the decision; prematurely forcing a decision rather than allowing one to reflexively emerge. The violence inherent in forcing subjects to decide—whether the decision is derived from the sovereign or popularly—is a key concern of the current work.¹

¹ On the question of forcing a decision prematurely see Carol Gilligan's discussion of moral development and the gendered dimension to ethics. Gilligan argues that a reluctance to judge, often associated with female moral development, does not necessarily reflect an *inability* to judge but a radical uncertainty concerning the forms and consequences of judgement. That one may be able *to judge* (verb) is accompanied with an awareness that judgement (or decisions) involves a correlative moral responsibility. See Carol Gilligan, *In a Different Voice*, (Cambridge, MA: Harvard University Press, 1982), p. 42.

The concept of dominion forms an important part of the development of the modern state form. For Hobbes, it is the absence of dominion that nourishes anarchy in the state of nature. Dominion is presumed to be a necessary relation for the conservation of humankind; without dominion substantive notions of *right* and *wrong*, *justice* and *injustice*, *friends* and *enemies* are unimaginable. A concern of the current work is the possibility of reframing the normative without drawing upon an entrenched tradition of mastery and dominion. Hobbes proceeds from the assumption that without dominion there can be “no propriety, no dominion, no mine and thine distinct; but only that to be every man’s that he can get, and for so long as he can keep it.”²

Whilst Hobbes distinguishes between a dominion *acquired* by force and dominion *instituted* by agreement the framing of political community is still in terms of the politics of mastery and dominion. This framing involves the authoritative allocation of decisions over and above the subject.³ This leads to the following paradox, which both Hobbes and Schmitt fail to take into account in documenting state power; that is, ensuring the security of the subject entails foreclosing the subject. It is the impact of this juridical ethic on the subject that underpins my critique of Schmitt’s concept of the political.

Richard Wolin has identified an irreconcilable tension at the core of Carl Schmitt’s scholarship between law and politics. This relates to Schmitt’s radical decisionism which, according to Wolin, emphasises the decision that is “born out of nothing.”⁴ This decisionism demands that the sovereign, as *the* authoritative entity, decide the conditions under which normal law can be suspended for the sake of the dire emergency. Understanding this decisionism is necessary to understanding the constitution of political community in Schmitt’s writings. Decisionism provides the means by which political

² Thomas Hobbes, *Leviathan*, Richard Tuck (ed.), (Cambridge: Cambridge University Press, 1996), p. 90.

³ It is important to note that Hobbes frames sovereignty in terms of dominion. The very language of dominion involves the paternal power of parent over child. Hobbes notes that “for the most part Commonwealths have been erected by the fathers, not by the mothers of families.” An interesting aspect is that in the state of nature dominion of parent over child rests in the mother, for the sole reason that without a marriage contract there is no ensure paternity. Nonetheless, in the civil condition dominion is exercised by men, dominion is received by women and children. This juridical framing forms a core aspect of the patriarchal protecting logic that is discussed in Chapter 5. *Ibid.*, p. 139.

⁴ Richard Wolin, ‘Carl Schmitt, Political Exceptionism, and the Total State’ *Theory and Society*, Vol. 19. No. 4. (August, 1990), p. 393.

community itself is constituted and, contrary to contract accounts of political community, rejects both parliamentary and plebiscitary models of political sovereignty. Wolin argues that the emphasis Schmitt places on decisionism is fundamentally at odds with the corresponding requirement of concrete order as the foundation of legal and political life.⁵ Nonetheless, Wolin mistakenly thinks that a commitment to the concrete ordering of political community – talking in terms of the empirical and functional role of the state – is fundamentally at odds with a decisionism based on a higher type of legality. This thesis argues that what allows Schmitt to talk in terms of concrete order whilst appealing to a decision that is forged *ex nihilo* is Schmitt's underlying juridical ethic. This juridical ethic does not reject law but, instead, is more concerned with the extra-legal dimensions of law.

It is this juridical ethic which provides the structure of address for political community and plays a vital role in understanding the nature of the political in Schmitt's works. The current work understands the term juridical not in terms of a systematic body of law, but in terms of an ethic which involves an authoritative entity exercising power in terms of *mastery* and *dominion*. In this regard, while Schmitt thinks that the friend and enemy grouping expresses the fundamental basis of the political it is only through mastery and dominion that the political can emerge. A juridical ethic underpins Schmitt's concept of the political and, as subsequent chapters detail, provides a framework for understanding the nature of sovereignty, legality, and legitimacy. Thus, without dominion there can be no politics.

Schmitt thinks that the role of philosophy in politics is primarily to interpret the 'empirical reality' of the state.⁶ Normative conceptions of the state, especially those based on pluralist assumptions, are not sufficiently embedded in the concrete experience of the state. According to Schmitt "a state which is not real cannot be the bearer or addressee of the concrete demands, duties, and feelings of an ethic of state."⁷ This

⁵ *Ibid.*

⁶ Carl Schmitt, 'Ethic of State and Pluralistic State' in (ed.) Chantal Mouffe, *The Challenge of Carl Schmitt*, (London: Verso, 1999), p. 195.

⁷ *Ibid.*, p. 198.

requirement of the concrete demonstrates the significance of the empirical in making philosophical claims about politics. Placing himself at a distance from strongly normative accounts of the state, Schmitt argues that ethical relationships must be based on concrete people or institutions.⁸ The significance of the state is that it provides the vehicle by which ethical relationships can be determined. It is not, as Schmitt relates in relation to Kant, the product of a transcendental ethic. Thus, it is the state that ‘puts in place the external conditions for ethical life’ according to Schmitt.⁹

Mastery and dominion, the juridical ethic identified throughout this thesis, is present in Schmitt’s ethic of state. Schmitt’s concept of democracy rests upon the homogeneity of political community. In evaluating Schmitt’s ethic of state it is necessary to examine the way in which unity is at the centre of his account of state: “Political unity is the highest unity – not because it is an omnipotent dictator, or because it levels out all other unities, but because it decides, and has the potential to prevent all other opposing groups from dissociating into a state of extreme enmity – that is, into civil war.”¹⁰ Schmitt stresses the capacity of the political to decide, meaning that political community involves the silencing of difference through an authoritative entity. This authoritative entity is sustained through a juridical entity, because it alone possesses the power of decision over and above the political community. This is not to deny that the political community itself can have a role to play in determining the nature of the state. It is through this juridical discourse that the contours of political community are themselves defined. The juridical functions as a way of demarcating friend from enemy and, in so doing, provides a structure of address for making political claims.

Schmitt does, in fact, acknowledge the pluralistic nature of the political world. It would be wrong to read Schmitt’s claim about the homogeneity of political community as a desire to turn the world into a universe. Schmitt’s characterisation of the plural foundations of the political world takes place at the international level. To talk in terms of

⁸ Schmitt, for example, argues that “ethical relationships like fidelity and loyalty are possible only in the reality of concrete life.” *Ibid.*

⁹ *Ibid.*, p. 199.

¹⁰ *Ibid.*, p. 203.

a *universe*, where there exists a singular humanity is to overlook the way in which the term ‘humanity’ functions as an ideological device of the political. Pluralism places too much emphasis on the capacity of the term ‘humanity’ to function as a regulatory ethic. That is to say, there is “no distinguishable community” inherent in term ‘humanity’ because this would assume that the divisions of the world could be overcome through consensus. Schmitt invokes Proudhon to declare that “who speaks of humanity desires to deceive.”¹¹ Consensus about what constitutes ‘the human’ or ‘humanity’ is fundamentally deceptive according to Schmitt:

For every consensus, even a ‘free’ one, is somehow motivated and brought into existence and often, to be sure, a rational and ethically justified consensus. Conversely, consensus produces power, and then often an irrational and – despite the consensus – ethically repugnant power. From a pragmatic and empirical perspective, the question arises of who controls the means of bringing about the ‘free’ consensus of the masses: the economic, educational, psychotechnical means of very different kinds whose help, as we know from experience, one can achieve a consensus.¹²

Schmitt’s analysis of the conditions of consensus within political community serves to weaken liberal claims about humanity. This is related to his concern that liberalism invokes ‘society’ and ‘humanity’ without considering how these same terms are produced through power. What constitutes ‘society’ and ‘humanity’ is not contractually grounded – *pacta sunt servanda* – but the product of political community deciding (and acting upon) the friend and enemy grouping. A contractual understanding of political community, where each individual enters into an agreement with the state and is free to terminate this at will, does not provide the conditions for unity within the political community. This is because the contract is so contingent that it is unable to ensure the ongoing foundations of political community. “In the background of this kind of contractual ethic,” Schmitt notes, “an ethic of civil war always lurks.”¹³

¹¹ *Ibid.*, p. 205.

¹² *Ibid.*, p. 202.

¹³ *Ibid.*, p. 207.

Thus, entering into political community on a contractual basis fails to develop the structure for unity that is a functional requirement of the Schmittian state. A contractual understanding of political community undermines the capacity of the state to determine the contours of the friend and enemy grouping. Moreover, thinking of the state through contract means that the focus is the type of ethical relationship that exists between citizen and state. What is lost in this approach, Schmitt suggests, is the way in which the concrete realities of political community actually create the contract:

In social reality, the subjection of the state to ethical norms means, of course, only control and domination by those men and social groups who, in the name of the ethical norms, come forward within the context of concrete reality against a concrete state, and bring those norms to realization.¹⁴

Thus, thinking in terms of the concrete order of the political is not at odds with a consideration of the ethic which sustains this same concrete order. It is this ethic, the juridical ethic which is played out through mastery and dominion, which forms the central focus of this current work.

The predominance of dominion and mastery in Schmitt's thought endorses the capacity of the political to generate the friend-and-enemy grouping across the entire field of discourse. The political is *autonomous* for the reason that it has the potential to turn any grouping into the politically decisive friend-and-enemy grouping. This juridical framing seeks to endow the political with permanent potentiality; namely, the political is a condition of permanent being—whether acknowledged openly or concealed—that threatens to undermine the normal conditions of politics and law. This way of thinking ensures that relations of mastery and dominion become the political norm, legitimating the authoritative power of the state vis-à-vis citizen.

1.2 The political is not *autonomous*

Schmitt is conventionally regarded as a political thinker for whom the foundation of every legal order is political; that is to say, law is established through the power relations

¹⁴ *Ibid.*

that derive from the friend and enemy grouping. This thesis argues, in fact, that Schmitt's concept of the political still depends upon a legal order. This legal order may not embody liberal understandings of law, in terms of its constitutionality, but there are nonetheless clear instances where Schmitt's thinking is inscribed within a juridical framework. This is most evident in Schmitt's discussion of the extra-legal conditions of law in *Legality and Legitimacy* where a Third Lawmaker determines the exceptional foundations of political community (see Chapter 6). Schmitt argues that legality should not just depend on arithmetic calculability. According to Schmitt, a determination of legality based upon such principles would be a "shameless mockery of justice."¹⁵ This should not be taken to mean that Schmitt is hostile to legal order but that the definition of legality should be expanded to take into account the way in which law depends upon non-constitutional settings. In this respect, a determination of what constitutes legality and law involves the establishment of a juridical ethic. This juridical ethic is essential to understanding the placement of the authoritative entity within Schmitt's concept of the political. Determinations of the friend and enemy grouping, the focal point of Schmitt's revival in contemporary political theory, require relations of mastery and dominion in order to determine the amity lines within a political community.

Paying attention to the way in Schmitt establishes the political as mastery and dominion is the thematic focus of the current work. The critical claim is that there can be no final definition of the political, since to do so would foreclose the very space of contestation that the political implies. Schmitt desires a concept of the political that can be understood *autonomously*. Talking in terms of 'autonomy' represents a strategic manoeuvre by Schmitt to establish the autonomy of the domain of the political vis-à-vis other conceptual domains. This framing of the political in terms of *autonomy* means that what constitutes politics must correspond to a rigid set of criteria. Such a criteria, incidentally, is inescapably inscribed in the normative order of hegemony. In this respect, Schmitt's concept of the political should not be understood autonomously.

¹⁵ Carl Schmitt, *Legality and Legitimacy*, (Durham, NC: Duke University Press, 2004), p. 29.

The burgeoning academic literature on Carl Schmitt demonstrates that political theory has not lost its capacity to generate dangerous, risky questions. Jeffrey C Isaacs famously remarked that “political theory fiddles while the fire of freedom spreads, and perhaps the world burns.”¹⁶ According to Isaacs the professionalisation of political theory has meant that theorists have “become ensnared in their various disciplinary matrices. Preoccupied with situating ourselves vis-à-vis the writing of Strauss and Arendt, Adorno and Lyotard, we have become puzzle solvers of the problems of others, focusing on approved topics, following academic conventions.”¹⁷ Sheldon Wolin has also remarked that “it is not at all clear today what would not count as politics.”¹⁸ Both Isaacs and Wolin express a concern that political theory is too inward looking, concerned more with the semantical contexts of great texts than political thought in an applied setting. Taking Carl Schmitt as a foundation for investigating the status of the political is not an inward looking act. Schmitt has never been an *approved topic* in contemporary political thought. Nor does Schmitt present political theory as a puzzle ready to be solved. If Schmitt is positioned vis-à-vis other thinkers it is because his political theory tests the very limits of conventional understandings of politics and law. If political thought is treated in terms of issue orthodoxy—the perpetual working out of pre-agreed understandings of the form and content of politics—then political theory itself is destined to overlook the way in which the core is constituted through an outside.

Schmitt’s revival affirms the claim that “[t]o theorize the inside one must theorize the outside.”¹⁹ In this respect, this thesis affirms the importance of moving beyond the interior—the true meaning of ‘politics’—as a means of coming to terms with the political. The very notion of an *autonomous* concept of the political is thereby at odds with the critical project of thinking beyond the inside/outside distinction in political thought. Chantal Mouffe’s account of the ‘constitutive outside’ places the emphasis on the ways in which the outside (the excluded subject) constitutes the normative core of ‘politics’ and ‘the political.’ Only by coming to terms with these occlusions can the core be *truly*

¹⁶ Jeffrey C Isaac, ‘The Strange Silence of Political Theory,’ *Political Theory*, Vol. 23, No. 4, 1995, p. 649.

¹⁷ *Ibid.*, p. 642.

¹⁸ Sheldon Wolin, ‘What Time Is It?’ *Theory & Event*, 1:1, 1997.

¹⁹ *Ibid.*

understood. The political cannot be designated rigidly since, as Agamben has demonstrated, the concept of the political is replete with excessive signification. It is this excess of meaning that gives the political its multiple character, allowing for paradox and contestability as to what constitutes the field of politics. An autonomous concept of the political is thereby at odds with contingency.

In this respect, Schmitt's concept of the political does not satisfy the requirement of multiplicity. Arditì is correct to define Schmitt's concept of the political "as that which brings the same into question."²⁰ Schmitt's requirement is not multiplicity but the supposed political clarity that emerges when a people expresses itself in terms of homogeneity. Talking in terms of the autonomy of the political—vis-à-vis all other domains—involves a claim about the superior capacity of the political to demarcate the right boundaries of thought, conduct, and experience. All other conceptual systems (economics, aesthetics, jurisprudence, morality) are deemed insufficient because they do not take the challenge of the exception and the supreme emergency seriously. Responding to the exception, whether the product of constitutional crisis and/or external threat, involves the defence of the homogenous against the heterogeneous. Schmitt's understanding of the political in terms of the friend-and-enemy distinction can be read as the endorsement of the polemical in the field of political. But as Arditì argues, Schmitt fails to ground the political in polemical practice: "This is because the political, *as a concept and as a practice*, is governed by its polemical nature. This polemical nature entails that the occasion of the political is always indeterminate, a matter of dissembling, in so far as it is concerned to make an adversary of the non-political, which may in fact turn out to be the dissemblance of its political nature."²¹

Accepting that the political does not exist autonomously, contra Schmitt, means that the political cannot be designated as a secure and discrete field of knowledge, conduct and experience. Defining the political as a rigid entity, involving the suspension of something inherently in flux, fails to capture the sense in which the political is a polemical practice;

²⁰ Benjamin Arditì and Jeremy Valentine, *Polemization: The Contingency of the Commonplace*, (Edinburgh: Edinburgh University Press, 1999), p. 38.

²¹ *Ibid.*, p. 39.

not polemical in the sense of Schmitt's friend-and-enemy distinction but polemical to the extent that what constitutes 'politics' and 'the political' is subject to both reiteration and reinvention from the standpoint of one's subject position. Advancing an autonomous concept of the political thereby entails a methodological claim about the superior capacity of the political vis-à-vis other domains. For this reason, Benjamin Barber thinks that the *autonomy of the political* might more appropriately be expressed as the *sovereignty of the political*:

To speak of the autonomy of the political is in fact to speak of the sovereignty of the political. For by sovereignty is meant not merely the dominion of the state over other forms of association, but the dominion of politically adjudicated knowledge, under conditions of epistemological uncertainty, over other forms of knowledge. To be sure, this sovereignty over knowledge is wholly residual: it comes into play only with the breakdown of ordinary cognitive consensus, and only where some public judgement is required by the need for common action.²²

Barber is nonetheless sceptical of approaches to the political that seek to undermine politics as a stable field of knowledge. "Politics bereft of philosophical foundations," Barber notes, "can quickly deteriorate into the rule of unreason or majoritarian tyranny."²³ This stems from Barber's conduct-centred notion of politics. An emphasis on the conduct of politics involves the pragmatic delinking of questions concerning conduct from the epistemology or sociology of knowledge: "politics remains something human beings *do*, not something they possess or use or watch or talk about."²⁴ Thinking of the political in terms of conduct means that the constitutive foundations of political knowledge are marginalised, in favour of a philosophised behaviourism. This leads Barber to claim that "[p]olitics is what men (sic) do when metaphysics fails; it is not metaphysics reified as a constitution."²⁵ As a good democrat, committed to models of

²² Benjamin Barber, *The Conquest of Politics*, (Princeton: Princeton University Press, 1988), p. 14.

²³ This thesis contests the claim that 'unreason' has no place to play in political rationality. Taking 'unreason' into account allows for a consideration of the hegemonic relationships that inform reason and the reasonable subject in liberal political theory. *Ibid.*, p. 7.

²⁴ *Ibid.*, p. 11.

²⁵ *Ibid.*, p. 209.

political rationality that encourage deliberation and non-distorted communication, Barber claims that “political judgement is the multitude deliberating, the multitude in action.”²⁶

This sense of the multitude, where politics involves multiple claims on reality, is a central claim of the current work. In seeking to draw attention to the inconsistencies in Schmitt’s autonomy thesis the intent is to suggest that autonomy itself (involving the mastery of the political over all other domains) does not satisfactorily embody the knowledge and conduct of politics. Thinking of the political as either the concretisation of the friend-and-enemy grouping (Schmitt) or as a non-violent means for the establishment and maintenance of stability and order (Crick) both narrow down the field and scope of the political. Schmitt stresses the *ratio* of political energy as embedded in the definition of the public enemy (*hostis* rather than *inimicus*). Crick, looking to Arendt, does not endorse the existential violence implicit in the Schmittian political universe. Stressing the foundations of the political in *conciliation* rather than *violence* and *coercion* means that politics becomes associated with a specific type of public conduct: “Palace politics is private politics, almost a contradiction in terms. The unique character of political activity lies, quite literally, in its publicity.”²⁷ Both approaches, whether grounded in the phenomenology of violence or the ethics of rational deliberation, emplace the political within a single field of meaning.²⁸

Benjamin Barber claims to offer an understanding of the political that stresses the pragmatic grounds of political reason and judgement, thereby overcoming the possibility that the political becomes irredeemably bound up in any one way of thinking. This pragmatic approach, in stressing the contextual foundations of political knowledge, “is an

²⁶ *Ibid.*, p. 210.

²⁷ Bernard Crick, *In Defence of Politics*, (Chicago: Chicago University Press, 1972), p. 20.

²⁸ Perry Anderson offers an interesting discussion of the difference between the rationalist model, in the thought of John Rawls, and Carl Schmitt, as an example of the existential moment in politics. In discussing the thought of Oakeshott, Hayek, Strauss and Schmitt he notes the following: “If we compare the general fortune of these thinkers of the radical Right to that of more conventional eminences of the Centre, there is a pregnant contrast. The work of just one theorist, John Rawls, may have accumulated more scholarly commentary than that of all four put together. Yet this veritable academic industry has had virtually no impact on the world of Western politics. The reticence of its subject, who has never risked his reputation with express commitments, is no doubt part of the reason. But it is also to do with the distance between a discourse of justice, however Olympian, and the realities of a society driven by power and profit.” Perry Anderson, *Spectrum*, (Verso: London: 2005), p. 27.

attempt to be true to the political by developing a language of consequences and ends appropriate to the domain of human action.”²⁹ A pragmatic approach to political judgement thereby stresses the way in which the political emerges *in the process of politics* rather than exists as a stable or autonomous field.

This pragmatic approach is embedded in the liberal tradition of political theory. It imagines the subject to be an eminently reasonable subject. Richard Rorty’s ironist exemplifies this pragmatic approach to politics. “The ironist,” Rorty notes, “takes the words which are fundamental to metaphysics, and in particular to the public rhetoric of the liberal democracies, as just another text, just another set of little human things.”³⁰ Reducing the political down to the public and/or the procedural establishes politics as a specific type of conduct, excluding the ways in which politics constitutes the political and the political constitutes politics; that is to say, politics assumes many forms, neither of which can be adequately captured by thinking in terms of publicity (Arendt/Crick) or pragmatism (Rorty/Barber). If the way in which politics is articulated, through shared public vocabularies, becomes the determination of what counts as politics then the way in which subjects ‘do politics’ is narrowed down to the level of conduct rather than knowledge. Thinking constitutively about the political does not only mean thinking in terms of a constructivist ethic (how politics is constructed as politics) but it also means paying attention to the ways in which the subject takes a subject form. For Rorty to claim that “democracies are now in a position to throw away some of the ladders used in their own construction” is not only a type of philosophical triumphalism but it also assumes that the philosophical legacy of the Enlightenment has achieved its task of freeing a universal subject from self-imposed tutelage.³¹ It is also to say that the Enlightenment project is the best of all possible worlds, able to fulfil human needs with the least violence to subjects. Throwing away the ladders that have constructed the liberal political tradition on the basis of expired validity is not a satisfactory basis for political thought. If

²⁹ This pragmatic approach to the political stands in contradistinction to dialectics (or, expressed differently, metaphysics): “Dialectics is an attempt to discover an all-embracing language of praxis in the collision and interaction of philosophy and politics, thought and action, universality and particularity, and the ideal and the historical.” Benjamin Barber, *op. cit.*, p. 18.

³⁰ Richard Rorty, *Contingency, Irony, and Solidarity*, (Cambridge: Cambridge University Press), p. 93.

³¹ *Ibid.*, p. 194.

the way in which a tradition rationalises itself can be discarded at will then so too can the effects of its rationalisation; bare life, life which has been denied the capacity for human flourishing, thus experiences a double loss. Judith Butler expresses this in *Precarious Life*:

I am not only referring to humans not regarded as humans, and thus to a restrictive conception of the human that is based upon their exclusion. It is not a matter of a simple entry of the excluded into an established ontology, but an insurrection at the level of ontology, a critical opening up of the questions, What is real? Whose lives are real? How might reality be remade? Those who are unreal have, in a sense, already suffered the violence of derealization. What, then, is the relation between violence and those lives considered as “unreal”? Does violence affect that unreality? Does violence take place on the condition of that unreality?³²

For pragmatic political philosophy to think that the foundations of a political tradition can be disregarded at will is naïve voluntarism with little, if any, awareness of the ways in which subjects are both constituted beings and constitutive beings. If the political is to be understood as a vocabulary, something which is articulated by individuals, then vocabularies can be discarded at will. This is with little consideration of the ways in which vocabulary changes rupture the identity and status of subjects. Butler’s account of bare life challenges this procreative concept of the political (where language is the thing which creates politics) drawing attention to the dangers of thinking that the Enlightenment project has authored a universally shared system of rights and immunities that is experienced by the multitude.

Thinking constitutively about the political involves a consideration of the types of vocabularies that are used in the process of constituting the political subject but, more critically, it does not accept the pragmatic belief in language as *the* designator of the real. Bare life is *derealization*; the absence of a life endowed with value. According to Butler, “[t]he derealization of the “Other” means that it is neither alive nor dead, but interminably spectral.”³³ Bare life encounters its extreme in the Schmittian political universe; the decisionist energy of Schmitt’s friend-and-enemy grouping values neither

³² Judith Butler, *Precarious Life: The Powers of Mourning and Violence*, (Verso: London, 2004), p. 33.

³³ *Ibid.*, pp. 33-34.

life nor bodily vulnerability. Establishing *power* as the antithesis of *life* is a prominent feature of Schmitt's concept of the political; that Schmitt wants to establish the autonomous grounds of political reason, without reference to ethics, is in itself an example of the juridical.

The current work is not alone in suggesting that the revival of interest in Carl Schmitt's work is curious, particularly from the radical democratic tradition. Mark Lilla argues that the "left-wing case made for studying Schmitt is certainly a curiosity but also more interesting and radical than the conservative one."³⁴ Lilla thinks that there is a greater willingness amongst thinkers on the left to take on liberalism in "a spirit closer to Schmitt's own."³⁵ Disillusion with the Frankfurt School has driven radical democracy towards liberalism (in the case of Habermas) or the politics of struggle (in the case of Mouffe). Lilla claims that Schmitt's "critique of parliamentarism and the principle of neutrality can be seen in a left-wing light as unmasking domination in liberal societies; his unabashed defence of the friend-enemy distinction is said to remind us that politics is, above all, struggle."³⁶ At the same time, Lilla contradicts himself by claiming that those who have revived Carl Schmitt have done so without sufficiently probing his "moral universe."³⁷ If Schmitt's defence of the friend-enemy distinction is about struggle, as Lilla claims, then the Schmittian moral universe is also grounded in this same struggle. But this thesis does not accept a reading of Schmitt primarily in terms of the friend-and-enemy grouping, suggesting instead that the desire to build a concept of the political that

³⁴ Mark Lilla, *The Reckless Mind: Intellectuals in Politics*, (New York: New York Review Book, 2001), p. 63.

³⁵ Lilla identifies Chantal Mouffe and Joachim Schickel as key examples of thinkers willing to use Schmitt for the purposes of attacking liberalism. In this respect, particularly in relation to Mouffe, Lilla is rather uncritical. Mouffe does not resurrect Carl Schmitt for programmatic purposes (in the sense of instituting a Schmittian order or *nomos*) but uses it for the sake of diagnosing the false promises of the liberal-democratic compromise. In this respect, Mouffe is akin to Butler in seeking to account for the constitutive relationship between exclusion and the political. Lilla wrongly presumes that theory wears a generic face (theory is always about an ideal, awaiting actualisation) rather than treating theory as a contextual form. Mouffe's discussion on Schmitt may be curious, but it is precisely the fact that it does not fit that gives her discussion of Schmitt in *The Return of the Political* its critical force. See, also, Chantal Mouffe, *Return of the Political*, (London: Verso, 1993). *Ibid.*, pp. 63-64.

³⁶ *Ibid.*, p. 64.

³⁷ The primary problem with Lilla's reading of Schmitt and Mouffe is that he takes the existence of a 'moral universe' as a pre-given. See, for example, where Lilla argues that "[t]here is a remarkable lack of seriousness among those studying and promoting Schmitt today, whatever their partisan motivations, an unwillingness to probe too deeply into his moral universe." *Ibid.*, p. 65.

is autonomous depends on the existence of the modern state backed up through theology (as the discussion on *theopolitik* attempts to convey). This political theology, involving a claim about the inaccessibility of the decision to ordinary persons, establishes a form of political rationality that rewards violence and dismisses reflexive forms of political judgement. In so doing, the juridical is an integral part of Schmitt's concept of the political. These same juridical characteristics—mastery and dominion in the domain of the political—are present in both liberalism and Schmitt's decisionism. Schmitt might escape the formalism of modern liberalism, notably its desire to regulate conduct through rules, but he shares with liberalism an ethic of the juridical. This juridical ethic results in mastery and dominion trumping all other ethical relations. Political rationality becomes the capacity to generate an authoritative structure for decision-making rather than the quality of the relations between subjects.

This emphasis on decision-making is also present in liberalism. The Rawlsian conception of the subject draws upon Kantian precepts in claiming that choice is the decisive aspect of moral conduct. Mastery and dominion is present in Rawls' identification of choice as the foundation of moral agency, defined as "the moral law that men can rationally will to govern their conduct in an ethical commonwealth."³⁸ The emphasis on *rational will*, a mainstay of liberalism and its conception of human agency, represents a juridical conception of political and moral conduct. Whilst this juridical approach does not, in itself, represent a blockage to ethical conduct in politics it does, nonetheless, need to be open to reflexive forms of ethical understanding.

Thinking in terms of the constitutive rather than the juridical means that the imperative of adjudication is dropped in favour of reflexive forms of reasoning; accordingly, the focus on 'choice' is consequently changed. Rather than think of choice as the capacity of free and equal choosers to exercise *rational will* the emphasis falls on the ways in which choices are prefigured by knowledges that predate as well as mediate the subject. In this respect, Judith Butler's critique of the "subject" in liberal political thought is insightful. Speaking of the "subject" is not to speak of an individual but, more imaginatively, it

³⁸ John Rawls, *A Theory of Justice*, (Oxford: Oxford University Press, 1971), p. 251.

involves the constitutive patterning of knowledge onto bodies that can then attain (or be denied) the label 'human.'

Methodologically, this conception of the "subject" destabilises the Kantian notion of the autonomous agent which has been so central to contemporary liberal thought. Butler's subject involves casting a reflexive gaze towards the processes that constitute the subject. Accordingly, "when we are speaking about "the subject" we are not always speaking about an individual: we are speaking about a model for agency and intelligibility, one that is very often based on notions of sovereign power."³⁹ This notion of sovereign power is a foundational assumption of the liberal concept of the political. Since politics is bound up in conduct and this conduct is the product of individual agency, the liberal concept of the political stresses the capacity of the subject to unilaterally determine the field of possibility within a narrow field of action (i.e., the space that is specifically marked out for 'politics'). Such a paradigm does not pay sufficient attention to the knowledge of politics, the ways in which politics *constitutes the subject* and *the subject constitutes politics*. A reflexive ethic is needed for the reason that the political exists as a multiple rather than an autonomous. The lack of a fixed core to politics, the political, and the "subject" is a consequence of the way in which discourse constitutes itself as a real. "The power of discourse to materialize its effects," Butler narrates, "is thus consonant with the power of discourse to circumscribe the domain of intelligibility."⁴⁰ A reflexive ethic is thereby less concerned with adjudication and more with the restorative potential of ethics. This approach looks towards the boundaries of humanity and inhumanity, instituting new questions about the way in which the subject can be said to be political.

An eternal questioning of the political thus forms part of this reflexive way of looking at the world; an ethic of decisiveness matters less than an ethic forged through an awakening towards the "Other." For Butler, this entails the gentle questioning of those things designated in the name of 'politics' and 'the political':

³⁹ Judith Butler, *Precarious Life*, p. 45.

⁴⁰ Judith Butler, *Bodies that Matter: On the Discursive Limits of Sex*, (New York: Routledge, 1993), p. 187.

How might these ostensibly constitutive exclusions be rendered less permanent, more dynamic? How might the excluded return, not as psychosis or the figure of the psychotic within politics, but as that which has been rendered mute, foreclosed from the domain of political signification? How and where is social content attributed to the site of the “real,” and then positioned as the unspeakable? Is there not a difference between a theory that asserts that, in principle, every discourse operates through exclusion and a theory that attributes to that “outside” specific social and sexual positions?⁴¹

For those who question the capacity of this reflexive way of approaching political ethics—those who regard deconstruction as the enemy of constructive understandings of politics—Butler truly challenges. Butler does not abandon the need to reconstruct political subjectivity. Implicit in her account of exclusion is the need to bring excluded subjects into focus. This is evident in the following question: “How might such socially saturated domains of exclusion be recast from their status as “constitutive” to beings who might be said to matter?” Butler wants to recast political subjectivity, not to imprison political subjects by compelling them to reiterate established identities of exclusion. Talking in terms of an autonomous concept of the political, as Schmitt does, is thereby at odds with the ethical significance of reflexivity. But at the same time, this reflexive approach does pay attention to the types of knowledges, subjects and practices that are instituted through the Schmittian approach to the political.

1.3 Defending contingency

A key theme in the current work concerns the way in which Schmitt’s concept of the political is embedded in a juridical framework of mastery and dominion. Whilst the focus concerns the significance of Schmitt’s juridical approach to the political it is important to note that the way of approaching the political in the current work differs radically from Schmitt. It is oriented towards a consideration of the political in terms of the sociology of knowledge, evaluating the construction of the political rather than constructing the political as a rigid ethic. Karl Mannheim provides a methodological backdrop to the current work in bringing to the fore the way in which the political can be understood as an active, lived reality rather than a passive, received reality. Mannheim’s objective is to investigate how thought becomes an “instrument of collective action” rather than to

⁴¹ *Ibid.*, p. 189.

describe how thought “appears in textbooks on logic.”⁴² Accenting how the political operates as a socially produced knowledge, developed *through* and culminating *in* social action, means that discussions on the political are not reduced down to a final meaning. Words do not become the expressions of final meaning but are subject to the ebb and flow of contingency.

The contingency of the political is a consequence of the competitive framing of political concepts. The force of a concept is determined by a process of inclusion and exclusion: “Every concept represents a sort of taboo against other possible sources of meaning—simplifying and unifying the manifoldness of life for the sake of action.”⁴³ Assessing the political in terms of the sociology of knowledge reveals how concepts include and exclude, prohibit and allow. Since there are manifold interpretations of what constitutes ‘politics’ it is necessary to consider how the political is competitively framed. As Mannheim argues, “[c]ompetition controls not merely economic activity through the mechanism of the market, not merely the course of political and social events, but furnishes also the motive impulse behind diverse interpretations of the world which, when their social background is uncovered, reveal themselves as the intellectual expressions of conflicting groups struggling for power.”⁴⁴ What constitutes “the political” thereby acquires considerable methodological and normative force. This is because in order for it to obtain the status of “politics” or “the political” involves the capacity of an idea to establish hegemony over discourse. The definitional question—“this is political” or “this is not political”—becomes an act of politics itself. Linking the concept of the political to the process of knowledge formation, whether through Mannheim or Foucault or Butler, allows the political to be seen as a constitutive practice. Political knowledge can thereby be understood as an intellectual act, conditioned through relationships of power.

⁴² Karl Mannheim, *Ideology and Utopia: An Introduction to the Sociology of Knowledge*, trans. Louis Wirth and Edward Shils, (Harcourt: San Diego, 1936), p. 1.

⁴³ *Ibid.*, p. 22

⁴⁴ The important thing to note about Mannheim’s treatment of the sociology of knowledge is that it focuses largely on actors or subjects who have a stable identity. Thinking of rival interpretations as the “expressions of conflicting groups struggling for power” assumes that the struggle is an overt struggle. The constitutive outside does not figure in Mannheim’s thinking. *Ibid.*, p. 269.

Schmitt's desire to establish the autonomous grounds of the political, talking in terms of the *differentia specifica*, would contest the fundamental premise of this approach to the study of the political. Schmitt wants to talk of the political as denoting the purest of all categories in human thought, expressed in terms of the friend-and-enemy grouping. In claiming that the concept of the political must be understood in terms of discourse—i.e., how power constitutively underwrites the concept of the political—the purpose is to underscore the constructed and contested ontology of politics. In putting forward a constitutive approach to the political, one which criticises the implicit mastery in both formalism and decisionism, the objective is to delink the juridical from the political. With reference to Judith Butler's work this thesis affirms the value of thinking of ethics and politics as a reflexive process, involving a process of deconstruction and resignification. Butler argues that “the task [of theory] is to interrogate what the theoretical move that establishes foundations *authorizes*, and what, precisely it excludes or forecloses.”⁴⁵

Nonetheless, the task of theory does not end here, least of all for Butler, because theory is endowed with the task of resignification. “To deconstruct is not to negate or dismiss,” Butler declares, “but to call into question and, perhaps most importantly, to open up a term like the subject, to a reusage or deployment that previously has not been authorized.”⁴⁶ For Butler, this questioning must start by examining the problematic status of the subject in modern thought. In *Gender Trouble* she examines the ways in which the subject is executed through performance rather than the discovery of an internal, essential truth. Expressing the subject in terms of the performative rather than essentialism challenges fundamental precepts of liberal thought: *How is the subject constituted? Can the subject be reduced to the real or is the subject a phantasm of our own creation?* Butler thinks beyond the subject, arguing that “no subject is its own point of departure; and the fantasy that it is one can only disavow its constitutive relations by recasting them

⁴⁵ Judith Butler, ‘Contingent Foundations: Feminism and the Question of Postmodernism,’ in eds. Judith Butler and Joan Scott, *Feminists Theorize the Political*, (New York: Routledge, 1992), p. 7.

⁴⁶ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, (New York: Routledge, 1992), p. 15.

as the domain of countervailing externality.”⁴⁷ The phantasmic subject is “one who determines its world unilaterally.”⁴⁸

A need to determine the world unilaterally, whether by individuals and/or the state, is a prime example of the workings of mastery and dominion in the domain of the political. This need for unilateral control over the political is the dominant ethic of Carl Schmitt’s concept of the political. The need for a higher legal entity, standing above and beyond the temporal world, is fundamental to Schmitt’s understanding of politics and law. Schmitt’s concept of the political expresses itself in terms of the concrete relations of the friend-and-enemy grouping. For Butler, it is this process of differentiation that constitutes (and deconstitutes) the subject: “The subject is constituted through acts of differentiation that distinguish the subject from its constitutive outside, a domain of abjected alterity conventionally associated with the feminine, but clearly not exclusively.”⁴⁹

1.4 Summary of thesis

This thesis is built up around the themes of mastery and dominion as they emerge in Carl Schmitt’s concept of the political. A key claim is that Carl Schmitt’s desire to establish an autonomous concept of the political, involving the friend-and-enemy grouping, is grounded in a juridical approach to political order. Chapter 2 examines the theme of mastery and dominion by looking at the revival of interest in Carl Schmitt’s thought in contemporary political theory. The ‘curious’ revival of Carl Schmitt should be understood in strategic terms, fulfilling a tactical role in the ongoing debate between those who think that conduct can be regulated through frameworks of reason and those, on the other hand, who associate these frameworks of reason as extensions of the constitutive relations of mastery and dominion in the domain of the political.

Chapter 3 argues that Schmitt’s desire to establish an autonomous concept of the political is equally as problematic when the foundations of his concept of the political are taken

⁴⁷ Judith Butler, ‘Contingent Foundations: Feminism and the Question of “Postmodernism,”’ p. 9.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, p. 12.

into account. Thinking of Schmitt's concept of the political as the concrete relationship established in the friend-and-enemy grouping crucially overlooks the relationship that the political has to the modern state form as well as overlooking the decisionist aspect to the political. Schmitt's political cannot be reduced down to the friend-and-enemy grouping. It is important to consider how Schmitt's desire to establish an autonomous concept of the political actually seeks to consolidate the political vis-à-vis other domains. Those working towards a reflexive account of ethics (Butler, Foucault, and Mouffe) need to be conscious of the ways in which Schmitt's autonomy claim represents the colonisation of all other domains by the political.

Another way in which Schmitt's concept of the political fails in its mission to be autonomous is the relationship between the miracle and political form. Chapter 4 claims that the decisionist capacity of the political is ultimately grounded in theology. Schmitt claims to be working from a tradition of *Realpolitik* but, in fact, his account of political sovereignty is more appropriately described as *Theopolitik*. The emphasis placed on the miracle as the determination of political rationality seriously undermines Schmitt's ability to define the political autonomously.

This heavily theologised concept of sovereignty has consequences for constitutionalism and the modern state. The Schmittian ethic of the state represents an extreme type of 'mastery' and places few, if any, constitutional safeguards on the exercise of political power. For this reason, Chapter 5 concludes by suggesting that Schmitt is more interested in the technology of power rather than the ethical exercise of power. The implications of this concept of power for legal order are examined in Chapter 6. When Schmitt's ethic of state is taken as the foundation for international order then it is evident that Schmitt's desire to establish an autonomous concept of the political justifies the absence of restraint on state conduct at the international level. Schmitt's legal order speaks in terms of the exception and resists the extension of legal norms to the international level. For this reason, Schmitt's legal universe symbolises the exception to the rule but, it is argued, these exceptions give rise to an understanding of the political that separates politics from ethics.

Chapter 7 asks whether the exception in political theory can be resolved differently, in ways less harmful to the multitude. For this purpose, the reflexive framework established by Butler, Foucault, Agamben and Mouffe offers a superior way of looking at the political. Without the imperative of mastery—the unilateral control of conduct by the subject—political thought is freed from the need to exercise dominion and can focus on the ways in which the subject can be constituted in less exclusionary ways. For Schmitt, this would involve the very abandonment of politics. Taking flight into *purely normative* or *purely ethical* is to overlook the way in which the juridical ethic structures political community itself. For Schmitt, if you take away the juridical, by refusing to enter into a public discussion about friend and enemy, then you weaken political community. This thesis does not anticipate either the end or abandonment of a juridical ethic in politics. What it does call for is for an awareness of how Schmitt's juridical ethic provides a structure of address for understanding political community. Thinking about how this juridical ethic underpins conventional politics – especially in terms of discourses on legitimacy, the constitution of political community, the nature of sovereignty – is to generate a series of critical questions for further engagement with the political. Understanding how Schmitt's juridical ethic, functioning in terms of the mastery and dominion of the state over political community, underwrites substantive accounts of contemporary politics allows for these insights to be carried through into the field of conventional politics.

2

The curious revival of Carl Schmitt

2.1 Curious revival?

This chapter examines the placement of Schmitt in contemporary political theory with a central division between those who see politics as depending on a procedural order and those who think that this order actually denies the political. Revivals are rarely the direct paraphrasing of preceding questions into the present. For this reason, it is important to give due consideration to the way in which the revival of interest in Carl Schmitt's work has involved a division between proceduralists (Habermas and Heller) and radical democrats (Mouffe, Hirst, Žižek). Schmitt's revival in political theory has directly influenced debates in democratic theory, especially in relation to the role that norms should play in shaping political community. A significant question in the revival of Carl Schmitt has been the value of looking to the exception as a way of understanding the political. Radical democracy has looked to Schmitt as a means of contesting the framing of the political in terms of proceduralism. Defenders of the universal in political life—Habermas and Heller—have criticised the revival of interest in Carl Schmitt for lowering the possibility of normative reordering discourse in positive ways.

This chapter examines how Schmitt has been used as a means of challenging procedural conceptions of democracy and how, ultimately, this challenge. Schmitt's revival has unleashed into contemporary debate questions about the status of normative judgement in making claims about politics. This chapter is divided into two parts. The first examines the contemporary revival of Carl Schmitt through radical democratic thought. Carl Schmitt's critique of liberal constitutionalism provides a basis for radical democracy to contest the rendering of politics in terms of proceduralism. A concern with the 'constitutive outside' can emerge through taking into account Schmitt's phrasing of the political in terms of the friend-and-enemy grouping. Those who contest the reduction of political order to a procedurally defined norm have looked to Schmitt to remind us that political order is provisional, contingent, and open. The second part examines those who

treat Schmitt's revival as the degradation of discourse, involving the abandonment of normative standards to adjudicate between *right* and *wrong* in political life.

2.2 Radical democracy and the revival of Schmitt: Mouffe, Hirst, and Žižek

The revival of Carl Schmitt in radical democratic theory challenges the proceduralism of the liberal-democratic model. This proceduralism constructs the political as the institution of the 'right procedure' for the reconciliation of disagreement within a political community. Schmitt is considered useful in this endeavour because his account of democracy does not depend upon rule-based reason in which "the will of a transient majority of the voting citizenry" becomes the expression of political community.¹ Similarly, Schmitt recognises the limits of constitutional law in addressing substantive questions of political community. In this regard, Schmitt provides radical democratic thought with the capacity to examine the limit points of political community.

Each of the thinkers associated with radical democratic theory in this section offer different reasons for engaging with Schmitt's political and legal writings. Nevertheless, this grouping of Mouffe, Hirst, and Žižek demonstrates a common concern with the nature of consensus within liberal-democratic thought. Schmitt plays a key role in opening up discourse to the dangerous, risky questions of politics. Ignoring these questions involves a neglect of the underlying divisions within liberal-democratic practice. Chantal Mouffe positions Schmitt as the opponent of liberalism, providing radical democratic theorists with an alternative vocabulary to contest the exclusionary basis of liberal-democracy. Paul Hirst looks to Schmitt's decisionism as a way of challenging the liberal-democratic consensus of contemporary thought, specifically its neglect of the ongoing struggle associated with the political. Slavoj Žižek thinks that the intrinsic violence of Carl Schmitt's concept of the political needs to become a prominent theme of contemporary debate. Looking to the extremes of discourse, especially how politics consolidates involves the negotiation of violence, generates a different way of approaching liberal-democratic debate. It is important to consider how these thinkers

¹ Carl Schmitt, *Legality and Legitimacy*, (Durham, NC: Duke University Press, 2004), p. 24.

present Schmitt in terms of radical democratic theory. In so doing, the limitations of proceduralism as a way of reconciling political difference are clearly discernible.

2.3 Engaging the Other: Mouffe

Mouffe engages with Schmitt for the primary reason that Schmitt raises significant questions about the structure of political community that are overlooked in liberal-democratic theory, specifically an awareness of the Other in political community. For Mouffe, Schmitt provides a basis upon which the boundaries of a political community can be rearticulated in less exclusionary ways. Mouffe does not act as Schmitt's protectorate, speaking *through* Schmitt is not the same as speaking *with* Schmitt. In this endeavour, Mouffe frustrates the key tenets of Habermasian 'ideal speech' in declaring that citizens (not just political theorists) "must be willing to engage with the arguments of those who have challenged the fundamental tenets of liberalism."² The Habermasian account of speech believes that the norm of fair play will enable a condition of undistorted communication between political subjects. Schmittian speech is replete with an understanding of danger, unleashing into discourse manifold distortions, blockages, and untruths. Mouffe thinks that this way of looking at the political endows political discourse with a renewed understanding of the relationship between norm and the exception, proceduralism and substantivism, and, most critically, reveals the boundaries of inclusion and exclusion within the liberal democratic conception of the political.

Mouffe is interested in how Schmitt's image of democratic equality ruptures the liberal-democratic image of equality, with its Rawlsian emphasis on subjects as free and equal choosers within political society. Schmitt's account of democratic equality is given greater attention in Chapter 4. The important thing about the Schmittian concept of equality is that he is unwilling to extend equality to all: only equals should be treated equally. In this respect, Mouffe identifies two versions of equality which by their very incommensurability reveal an underlying paradox in liberal democratic thought. The liberal account stresses the inviolability of individual right; the democratic account links

² Chantal Mouffe, *The Democratic Paradox*, (London: Verso, 2000), p. 36.

equality to the particular character of the political community. Schmitt offers an understanding of the “constitutive outside,” meaning that the boundaries of exclusion determine the ontology and epistemology of the political.³ Mouffe draws disturbing questions from Schmitt in relation to the bounded nature of political community and the value of liberal-democratic consensus.⁴ These questions emerge in Schmitt’s democratic image of political community. The very identity of political community depends on the existence of regulative norms, performing a gatekeeper role, that determine the boundaries of exclusion and inclusion. The political community must generate its own conception of equality. There is no such thing as equality, only equality assessed in terms of the needs of the political community. Mouffe notes in relation to Schmitt that equality “cannot exist without the necessary correlate of inequality.”⁵ This contrasts with liberalism where the principle of equality categorically rules out correlates of inequality; the very notion of equality means that because all enjoy the same rights there can be no differentiation in terms of the types of subject positions.

Mouffe directs her focus to liberalism and the flattened account of subjectivity within liberal thought. The liberal promise of equality is a *false* promise. It does not do justice to the full dimensions of subjectivity, especially the fact that subjectivities are constituted through a domain of inclusion and exclusion. Mouffe wants liberal-democratic thought to engage with these shifting boundaries of exclusion. Equality under liberalism is platitudinous; so flattened by the principle of *equal treatment for all* that it disregards the constitutive dimension of the subject. Equality is juridical rather than ontological, meaning that subjects experience equality in terms of a legal framework without enjoying the rewards of *equal treatment for all*. For Schmitt, the concept of *equal treatment for all*

³ The relationship between ontology and epistemology assumes critical importance in the current work, especially when framed in terms of the constructivist ethic advanced throughout. ‘Being’ and ‘knowing’ are both constituted through relationships of power. These relationships should not be conceived behaviourally (that action is powerful) or in terms of positionality (she has more power relative to him) but in terms of the constitutive capacity of power (the subject enjoys subjectivity through the exclusion of an Other). The normative challenge, as detailed in the introduction, thereby concerns turning constitutive power relations of exclusion into productive power relations liberated from the constraints of mastery, dominion, and a juridical ethic.

⁴ *Ibid.*, p. 37.

⁵ *Ibid.*, p. 39.

is unworkable given the democratic needs of political community. Schmitt values substantive equality (only treating equals equally) above procedural equality (treating all, irrespective of subject status, equally). “As a consequence,” Mouffe relates, “he [Schmitt] rejects the idea that the general equality of mankind could serve as a basis for a state or any form of government.”⁶ Universal equality subsumes *all* under a single banner, suppressing the different range of positions open to subjects within liberal-democratic society. In stressing the multiple experience of subjectivity it is possible to see how different subject positions accrue different thresholds of rights, immunities, and, ultimately, existential value within liberal-democratic society.

Liberalism allows subjectivity its place within the field of creativity and human endeavour (each can create the world anew through their own efforts) but the subject is flattened when forced to operate in the domain of the political. Mouffe draws upon Schmitt in suggesting that the liberal account of equality is resolutely non-political. Because the liberal account of equality is unable to think in terms of multiple subject positions, especially excluded subjects, Mouffe invokes Schmitt to demonstrate how the eradication of difference is a function of political community. Mouffe does not set out to endorse the Schmittian concept of the political, least of all his totalizing conception of political community. Her focus concerns the demarcation of political community (*demos*) in terms of a discourse of inclusion and exclusion in which the Other (or the Schmittian enemy) features prominently. “What matters,” Mouffe observes in relation to Schmitt, “is the possibility of tracing a line of demarcation between those who belong to the *demos* – and therefore have equal rights – and those who, in the political domain, cannot have the same rights because they are not part of the *demos*.”⁷

Mouffe’s concern with the way in which the people is constituted in democratic and liberal discourse inverts the logic of the Schmittian account of the political. The identity of political community matters considerably for both Schmitt and Mouffe, since both

⁶ *Ibid.*, p. 38.

⁷ *Ibid.*, p. 40.

claim that democracy entails relations of inclusion and exclusion.⁸ The similarities end when the normative trajectory of their respective accounts of the political are examined more closely. For Schmitt, the political strives to ensure that the logic of the friend and enemy becomes part of the ethic (and constitution) of the state. Mouffe's outlook involves a renegotiation of the boundaries of political community, with the hope of extracting new ethical directions from the accounts of equality defended by liberals and democrats alike. The significance of this debate is that Mouffe is sceptical of the account of equality that can be found in Habermas' normative model of ideal speech and Benhabib's deliberative account of discourse ethics. The democratic logic is steadfastly grounded in the politics of closure, requiring the elimination of difference from the political community.

Mouffe does not think it possible for a political community to function through 'rational consensus' and specifically rejects Benhabib's claim that the problem of democracy is how to reconcile rationality with legitimacy.⁹ Benhabib accents the importance of "collective deliberation conducted rationally and fairly among free and equal individuals."¹⁰ According to Mouffe this is predicated on the possibility of an "*impartial standpoint equally in the interests of all*."¹¹ Mouffe uses Schmitt to challenge the deliberative model, especially its failure to distinguish between *mere agreement* and *rational consensus*. This is particularly important when considering the structuring norms present in the discourse ethics of Habermas and Benhabib. The equality assumption – "all have the same chance to initiate speech acts and to enter debate" – strives to achieve discourse that is free of domination and, in stressing norms of equality and symmetry, endows each subject with a right to challenge the assigned topics of conversation.¹²

⁸ *Ibid.*, p. 43.

⁹ *Ibid.*, p. 47.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

Mouffe does not think that Habermas' discourse-theoretical approach can effectively deal with the tension between liberalism and democracy. "In trying to reconcile the two elements of liberal democracy," she notes, "the aim of Habermas is no less than to establish the privileged rational nature of liberal democracy and consequently its universal validity."¹³ Like Schmitt, Mouffe contests the very notion of universal validity, declaring the world a *pluriverse* rather than a *universe*.¹⁴ This is because the constitutive aspect of the political is plurality, borne out of the fact that the political community receives its identity through the different positions occupied by subjects within the demos. Schmitt's friend and enemy distinction challenges the rationalism of discourse ethics. It is the state alone, when confronted with the dire emergency, which determines the *jus ad bellum* and, as such, can name an entire system of thought *rational* or *irrational*. Universal validity is not a pure speech act, it conforms neither to the guidelines of Habermasian ideal speech nor to the deliberative ethic of Benhabib. Universal validity must be regarded as a contextually grounded claim, articulated within a power community and reflective of the occlusions within a political community.

Mouffe's injunction to return to the political should not be confused with a desire to turn the Schmittian ethic of state into the dominant norm of the state. Mouffe does not call for the insertion of Schmittian ethics into democratic thought. The call to "return to the political" is a conceptual strategy designed to avert the gaze of the citizen away from procedurally grounded liberal reason (and its promise of universal consensus) towards a radical conception of reason which treats the universalisation of norms as the colonisation of norms. Mouffe engages with Schmitt because to do so is to demonstrate how political reason is an open system of discourse, never final or closed. There will always be different subject positions, each conferring different levels of access to the substantive content of politics.

¹³ Chantal Mouffe, *On the Political*, (London: Routledge, 2005), p. 84.

¹⁴ *Ibid.*, p. 87.

For Mouffe, Schmitt's contribution to constitutional theory is to provide a structure to deal with the partisan, something he notes was severely missing from the Weimar Constitution. Mouffe takes up this challenge of the partisan, upturning Schmitt in the process, in warning against a unipolar understanding of the political world. Mouffe counsels against a unipolar moment, both at the level of institutional politics and knowledge politics. Institutionally speaking, the world is comprised of partisan relations of power, each disclosing a perspectival claim that would result in the configurations of political order being multiple rather than singular. In terms of knowledge politics, encompassing the epistemological domain, the political cannot be reduced down to a procedural moment where consensus emerges through the force of the better argument. Partisanship demands that discourse be understood in terms of a system of subjectivity which allows/disallows, enables/disables, and includes/excludes. Schmitt's account of the political feeds into this system of subjectivity, the enemy becomes that which has been disallowed, disabled, and excluded. The friend is that which has been allowed, enabled, and included.

For Mouffe, the structure of public communication and deliberation is always embedded in a network of power relations: "Consensus in a liberal-democratic society is – and always will be – the expression of a hegemony and the crystallization of power relations."¹⁵ The current work shares Mouffe's fundamental premise. It also argues that any attempt at establishing consensus necessarily involves the removal of difference from the demos. In this respect, it is important to differentiate between *mere agreement* and *rational consensus*.¹⁶ In rejecting the notion of rational consensus – consensus which collectively expresses the free choice of all its members – it is necessary to consider how agreement within liberal-democratic society involves the exercise of power. Disagreement cannot be rationalised into being, it must be negotiated through an awareness of how power structures choice within liberal-democratic societies. It is for

¹⁵ Chantal Mouffe, *The Democratic Paradox*, p. 49.

¹⁶ Carl Schmitt, 'Ethic of State and Pluralistic State' in (ed.) Chantal Mouffe, *The Challenge of Carl Schmitt*, (London: Verso, 1999), p. 202.

this reason that Mouffe's analysis of consensus provides a fruitful basis to examine the relationship between power and agreement within liberal democracies.

Mouffe questions the capacity of discussion to achieve a universally agreed consensus across a political community. For a speech act to be universally valid requires strategies in *power* rather than reflexive deliberation in the form of the *speech act*. Mouffe endorses Schmitt's account of will formation in a democracy, claiming that it is necessary to "constitute the people *politically*."¹⁷ A weakness of liberalism is that it is unable to deal with the competing demands of liberalism (affirming plural recognition of subjects) and democracy (requiring intersubjective recognition of the demos). These demands constitute a central dilemma in liberal democratic thought owing to the fact that procedural equality (treating all equally) is unable to release the demos from its need for substantive conceptions of equality (only treating equals equally).

Mouffe deploys Schmitt diagnostically, drawing upon the Schmittian critique of liberal democracy without accepting his conclusions in the domain of the political. Mouffe's diagnostic approach identifies the weak points in liberal democratic thought, especially in relation to the constitutive 'we' of democratic community. At the same time, Mouffe works towards the resignification of the constitutive relations of political community by seeking to disentangle the political from Schmittian homogeneity: "The problem we have to face becomes, then, how to imagine in a different way what Schmitt refers to as 'homogeneity' but that – in order to stress the differences with his conception – I propose to call, rather, 'commonality'; how to envisage a form of commonality strong enough to institute a 'demos' but nevertheless compatible with certain forms of pluralism, as well as pluralism of political parties."¹⁸ Mouffe's political ethic differs from Schmitt in terms of its rendering of political community. Whereas Schmittian political community depends on the capacity of the demos to eradicate the enemy from within, Mouffe's account of political community aims at the *rearticulation* of constitutive power relations.

¹⁷ Chantal Mouffe, *On the Political*, (London: Routledge, 2005), p. 53.

¹⁸ *Ibid.*, p. 55.

Mouffe talks in terms of the ‘political articulation’ of democratic politics, signalling her discomfort with procedural conceptions of political community that dominate liberal political thought.¹⁹ In disallowing the Schmittian dilemma of political community, entailing the transformation of democratic community into homogenous community, Mouffe thinks in terms of a constructivist ethic. Liberalism is unable to constitute the people *politically* because it is held hostage by a methodological essentialism which depoliticises fissures with the demos. If the Schmittian ethic of state aims at the eradication of difference from political community, then the liberal ethic of state turns difference into a question of instituting the right procedure to deal with the source of difference. Neither approach, Mouffe suggests, is sufficiently able to deal with the ethical significance of difference across the political community. Schmitt treats difference as a hindrance to political community, without a unitary conception of the state’s mission then the state cannot act as a structure for authoritative decision making. Liberals, on the other hand, seek to normalise difference by turning substantive difference into difference regulated through the right procedure. The problem with the liberal consensus model is that rules are used hygienically, providing ‘voice’ to difference but only when the foundational rules are uncontested.

Schmitt challenges this hygienic understanding of the political, taking political thought beyond the norm into the territory of the exception. Mouffe agrees with Schmitt’s identification of pluralism as the key problem of liberal thought. Schmitt criticises the pluralism of Harold Laski for downplaying the role of the state in delivering stability and order to a political community. Pluralism does not conceive of political community in terms of a constitutive, sovereign identity – an implicit or explicit understanding of ‘we’ feeling. On the contrary, the pluralist conception of political community represents the weakening of constitutive, sovereign identity. This is because the subject is able to

¹⁹ Understanding the way in which concepts are articulated is not just to come to terms with how concepts are spoken. The articulation of concepts also involves questions of subjectivity. Jacob Torfing, for example, notes that “[a]rticulations that take place in a context of antagonistic struggles and conflicts are defined as hegemonic articulations.” Thus, an articulation can be read as an expression of antagonism and conflict. Jacob Torfing, *New Theories of Discourse: Laclau, Mouffe, and Žižek*, (Oxford: Blackwell, 1999), p. 298.

manipulate the ontology of the political through their respective membership of groups, associations, and networks of belonging.

Their pluralism consists in denying the sovereignty of the political entity by stressing time and time again that the individual lives in numerous different social entities and associations. He is a member of a religious institution, nation, labor union, family, sports club, and many other associations. These control him in differing degrees from case to case, and impose on him a cluster of obligations in such a way that no one of these associations can be said to be decisive and sovereign.²⁰

Schmitt affirms the need for the political community to formulate an identity that is decisive and sovereign. In fact, it is argued that Schmitt's account of political community is sovereign because it is characterised by decisiveness. Schmitt does not simply reject pluralism on the basis that it is the embodiment of the liberal worldview. His attack also relates to the fact that the pluralist understanding of the political undermines the very methodological project of *Concept of the Political*. This methodological project aims at the elucidation of an *autonomous* concept of the political, meaning that purity of political form matters more to Schmitt than plurality of political form. Schmitt defends an ethic of state which allows for decisiveness because it does not admit difference into its sphere of rationality. This results in Schmitt's epistemological claim that "[t]he pluralist theory of the state is in itself pluralistic, that is, it has no centre but draws its thoughts from rather different intellectual circles (religion, economics, liberalism, socialism etc)."²¹ The consequence of this epistemological claim is that pluralism lacks a credible account of the state; delinked from its Hobbesian capacity to command obedience it becomes a free-floating concept which can be undermined by the will of subjects through collective action.

Both Schmitt and Mouffe seek to question the limits of pluralism, both as an epistemological claim and as a condition of the political. Pluralism does not rise to the

²⁰ Carl Schmitt, *The Concept of the Political*, (Chicago: Chicago University Press, 1996), pp. 40-41.

²¹ *Ibid.*, pp. 44-45.

ethical challenge of the political. It neglects the primary dilemma of the political, chasing consensus even when faced with the widespread dissensus that exists in the domain of the political. This critique of pluralism is evident in Mouffe's constitutive account of political identities, understood as the process of the subject becoming political in her contact with other/Other subjects: "Since all forms of political identities entail a we/they distinction, this means that the possibility of emergence of antagonism can never be eliminated."²² This antagonistic account of the political developed by both Schmitt and Mouffe sits uneasily with the critique of mastery and dominion which develops in the thought of Foucault and Butler.

Mouffe seeks to recode the Schmittian dilemma of political community whilst simultaneously disallowing the phenomenology of violence implicit in the friend/enemy distinction. Mouffe's we/they distinction represents the endorsement of the Schmittian ontology of the political, especially its antagonistic grounding ethic. Mouffe describes Schmitt's *The Concept of the Political* as the "most radical challenge to liberalism" which, she declares, is more relevant today than ever.²³ Schmitt attacks the rationalisation of the political, turning politics into a process rather than the risky engagement of the subject with other subjects. Mouffe links into this theme by suggesting that the procedural turn in contemporary political thought – Rawls, Habermas, and Nozick – accepts the rationalising project of modernity. This rationalisation is the dominant tradition of liberal thought and, in keeping with the commanding norm of consensus, flattens antagonisms across the political community. "This kind of liberalism," Mouffe declares, "is unable to adequately grasp the pluralistic nature of the social world, with the conflicts that pluralism entails; conflicts for which no rational solution could ever exist."²⁴ For Mouffe, the liberal rationalisation of the political – transforming the substantive into mere procedure – undermines the way in which the political operates in terms of exclusion.

²² Chantal Mouffe, *On the Political*, p. 16.

²³ *Ibid.*, p. 11.

²⁴ *Ibid.*, p. 10.

For both Schmitt and Mouffe, it is antagonism which endows the political with existential power. “The social and the political,” Mouffe asserts, “have thus the status of what Heidegger called *existentials*, i.e. necessary dimensions of any social life.”²⁵ Crediting the political with the status of the existential is a consequence of the dialectical conception of human relations present in the work of both Schmitt and Mouffe. For Schmitt, the existential negation of the enemy signals the very essence of the political; it is the moment in which the latency of the friend/enemy distinction finally achieves concrete expression. For Mouffe, the constitution of the political community occurs through the field of power relations; these power relations are instituted through the dialectical power of political identity which, in turn, is predicated on the operational force of the we/they distinction. The difference between Schmitt and Mouffe is that Schmitt does not want to recode the political. Mouffe, on the other hand, thinks it possible to reactivate new possibilities which have been denied through the political: “every order is political and based on some form of exclusion. There are always other possibilities which have been repressed and that can be reactivated. The articulatory practices through which a certain order is established and the meanings of social institutions is fixed are ‘hegemonic practices.’ Every hegemonic order is susceptible of being challenged by counter-hegemonic practices, i.e., practices which will attempt to disarticulate the existing order so as to install another form of hegemony.”²⁶

Mouffe’s account of hegemonic and counter-hegemonic practices does not sufficiently recode the political to the extent that it can do away with hegemony. To do so would be to walk into the conceptual trap of liberal political epistemology and its belief that the political community can “constitute an harmonious and non-conflictual ensemble.”²⁷ Mouffe’s project of *dearticulation* and *rearticulation* aims at the resignification of the political. It seeks a middle ground between Schmittian ethics (friend/enemy) and pluralist democracy (a site of difference). Mouffe’s middle ground does not aim at the resolution of tensions within the political community (political identities, after all, are constitutive

²⁵ *Ibid.*, p. 17.

²⁶ *Ibid.*, p. 18.

²⁷ *Ibid.*, p. 10.

of hegemonic, inescapable power relations) nor does it aim at the establishment of a constitutional framework for the accommodation of difference (since pluralism runs the risk of becoming concessional pluralism, impressing a new identity on the Other). Mouffe's radical democratic project, with Carl Schmitt at the forefront, engages with the Other. This compromise position accepts the value of both traditions but, in so doing, the normative limits of both traditions are tested. Both the formalism of liberalism and the decisionism of Carl Schmitt are challenged.

By imposing limits on the exceptional, imploring subjects to be mindful of the multiple subjectivities that constitute the political, Mouffe seeks to ensure that liberal-democratic thought does not overlook the divisions within political community. Mouffe wants to "show how antagonism can be transformed so as to make available a form of we/they opposition compatible with pluralist democracy."²⁸ This approach, neither formalist or decisionist, is a risky manoeuvre. But it is the risky nature of the endeavour that gives Mouffe's discussion of Schmitt its critical edge. Affirming the primacy of the we/they distinction whilst trying to reframe the operational basis of democracy to minimise the consequences of the we/they distinction involves Mouffe arguing *against* rather than *for* Schmitt. For this reason, Mouffe argues that the primary task of democratic politics is "defusing the potential antagonism that exists in social relations."²⁹ Mouffe does not think that this antagonism can be transformed by means of a transcendental ethic. There is, she suggests, a difference between transcending the we/they distinction and constructing the we/they distinction along less potent lines.³⁰ Consequently, there can be no point "beyond hegemony" because this would involve the rationalisation of the political, denying the very force of the political in claiming to have overcome both hegemony and antagonism.

²⁸ *Ibid.*, p. 19.

²⁹ *Ibid.*

³⁰ See, for example, where Mouffe asks: "If we accept that this cannot be done by transcending the we/they relation, but only by constructing it in a different way, then the following question arises: what could constitute a 'tamed' relation of antagonism, what form of we/they would it imply?" *Ibid.*, p. 19.

Claiming that there is no point beyond hegemony also invalidates the neutrality model that dominates liberalism. Both Schmitt and Mouffe have contempt for democratic politics that look to the neutrality principle as a way of ameliorating or, more ambitiously, eradicating antagonism from the political community. Mouffe believes that this neutrality principle is responsible for the transformation of the ‘adversary’ into mere competitor: “The field of politics is for them a neutral terrain in which different groups compete to occupy the positions of power; their objective is merely to dislodge others in order to occupy their place, they do not put into question the dominant hegemony and there is no attempt at profoundly transforming the relations of power.”³¹ Mouffe does not think that there is a point “beyond hegemony” but, nonetheless, believes it is possible for political subjects to rearticulate the “dominant hegemony.” A particular hegemonic order can be contested yet, as Mouffe claims, hegemonic order itself is an enduring feature of political community. If political identity is constitutive of the we/they distinction then it seems logical for Mouffe to conclude that the political community itself is constituted through these same hegemonic power relations. Political community thus becomes the expression of the political identities that come into being through power.³²

For Mouffe, there is no such thing as a view from nowhere; there is no constitutional standpoint by which mastery itself can overcome. To think in these terms actually increases the likelihood of constitutional crisis. To remove the adversary from human life, by means of a procedural fix, only *sublimates* the adversary. The sublimated adversary represents a greater hindrance to political community than the adversary whose combative status (imagined, potential or actual) is acknowledged within the public sphere. Mouffe argues that the adversary is bound up in enjoyment (*jouissance*). To deny

³¹ *Ibid.*, p. 21.

³² There is an important consideration that Mouffe overlooks in discussing the constitutive nature of political identities; namely, the identity that remains unconstituted which nonetheless can rupture the stability of a particular hegemonic order. The identity *not yet constituted* has played a central role in radical democratic thought since the 19th century. The language of class-consciousness, most associated with Karl Marx, anticipates the constitution of a future identity that will unleash new forms of subjectivity into the political community. Because hegemony functions as a universal for Mouffe (hegemonic order is a necessary feature of political community) this means that it is not possible for new forms of subjectivity to come into being. All future political identities are the genomic representation of hegemonic order; the gene of hegemony can never be shaken off.

subjects the experience of this enjoyment constitutes a far more repressive act than the pleasure that Mouffe associates with the adversary:

The theorists who want to eliminate passions from politics and argue that democratic politics should be understood only in terms of reason, moderation and consensus are showing their lack of understanding of the dynamics of the political. They do not see that democratic politics needs to have a real purchase on people's desires and fantasies and that, instead of opposing interests to sentiments and reason to passions, it should offer forms of identifications conducive to democratic practices.³³

Talking in terms of “desire” and “fantasy” allows Mouffe to claim that her account of the political is *less sublimated* than the procedurally enclosed accounts advanced in liberal thought. The Schmittian version of political community, as depicted by Mouffe, offers a different rendering of the political subject than classical liberalism provides. Paying attention to the constitutive relations of the subject—in terms of a discourse of inclusion and exclusion—contests the notion that to be a subject is to exercise sovereignty over oneself. This explanation rests upon the existence of a libidinal economy which conditions knowledge of both *self* and *other*. In linking the we/they distinction to the libidinal economy Mouffe endorses an open political ethic. This political ethic receives the full force of its energy through the libidinal, an expression of innate sexual desire. Enjoyment (*jouissance*) of the enemy is borne out of perverse gratification; the enemy affirms your subjectivity and, in so doing, gratifies the self.

Schmitt does not talk in terms of the libidinal economy. Speaking of the political in terms of libidinal energy – where enjoyment determines the boundaries of enmity – is something which Mouffe develops through Freud, Lacan and Žižek. The constitutive foundations of the enemy significantly differ for Schmitt and Mouffe. Mouffe cites Freud's *Civilisation and its Discontents* where he indicated that “[i]t is always possible to bind together a considerable amount of people in love, so long as there are people left

³³ *Ibid.*, p. 28.

over to receive the manifestation of their aggressiveness.”³⁴ Schmitt, on the other, utilises a decisionist ethic which assesses the enemy into terms of its perceived threat to the homogeneity of political community. Schmitt does not speak in terms of desire or *jouissance* of the enemy; rather, Schmitt’s focus is characteristically bound up in the language of necessity. The enemy is the enemy not because she gratifies my subjectivity (my sense of who I am, generalised across the political community); the enemy is my enemy for if she were otherwise then my subjectivity itself would be grossly endangered.

Subjectivity is not called into question in Mouffe’s account of the adversary. This is because the adversary provides the means by which my subjectivity is enhanced; the enemy is my enemy not as a consequence of an objective condition but because she provides me with the means by which the boundaries between *ego* and *id* can be grasped. Without the adversary my sense of self would be incomplete. To say that the enemy “completes me” is to acknowledge, along with Mouffe, that the existence of an adversary is a central element of political ontology.

2.4 Engaging with consensus: Hirst

Mouffe’s engagement with Schmitt involves an awareness of the role of the adversary within political life. It is this lack of awareness of the enemy that Paul Hirst attributes to the consensus model in liberal thought. Hirst links the revival of interest in Carl Schmitt to the poverty of contemporary theory and the failure to encourage critical discourse beyond the rigid shell of contemporary liberal-democratic thought. “Political argument,” he declares, “has been virtually reduced to contests within liberal-democratic theory. Even radicals now take representative democracy as their unquestioned point of departure.”³⁵ Carl Schmitt’s decisionism does not idealise the conditions of politics, refusing to endorse the normative agenda of both liberalism and radicalism. This normative agenda rests upon the ethical inversion of the political; turning negative

³⁴ *Ibid.*, p. 26.

³⁵ Paul Hirst, ‘Carl Schmitt’s Decisionism,’ in Chantal Mouffe (ed.), *The Challenge of Carl Schmitt*, (London: Verso, 1999), p. 7.

political energy into positive, productive expressions of the political. Schmitt stands at a distance from these normative models, leading Hirst to claim that “because his thinking about concrete political situations is not governed by any dogmatic political alternative, it exhibits peculiar objectivity.”³⁶

Hirst thinks that Schmitt’s extra-normal understanding of the political is conducive to forms of discourse that resist the anti-political trajectory of modern thought. Rule-bound legalism rationalises political debate, instituting a private sphere in which the individual acts without restraint – irrespective of the impact of individual conduct on the political community. Delinking the political from procedural conceptions of law significantly affects the structure of discourse. According to Hirst, Schmitt’s “existentially primitive” concept of the political means that “speeches and motions in assemblies should not be contraposed to blood and iron but with the moral force of the decision, because vacillating parliamentarians can also cause considerable bloodshed.”³⁷

Hirst looks to Schmitt’s decisionism as a means of challenging the normative authority of proceduralism in contemporary liberal-democratic thought. This proceduralism does not just concern the way in which political community arranges itself normatively – justice, freedom, rights, equality – but deals with the order of political community itself. Proceduralism operates within the horizon of the norm; forms of discourse which challenge the dominant norm are incorporated into the dominant discourse in the name of “value pluralism.” This leads Hirst to claim that “[t]he peaceful, legalistic, liberal bourgeoisie is sitting on a volcano and ignoring the fact. Their world depends on a relative stabilization of conflict within the state, and on the state’s ability to keep at bay other potentially hostile states.”³⁸ Where the liberal *sublimates the political*, Schmitt *desublimates the political*. Thinking of the political in terms of relations of enmity means

³⁶ *Ibid.*, p. 8.

³⁷ *Ibid.*, pp. 9-10.

³⁸ *Ibid.*, p. 9.

that public reason is not used to gloss over the cracks within liberal political epistemology, especially the divisions existing across the political community.

The Schmittian account of the political can be described as desublimated, permitting the expression of instinctual energies in the domain of the political. The problem with proceduralism is that it promotes value pluralism and the eradication of conflict whilst failing to address the substantive question of value incommensurability. It treats all values as potentially commensurable, provided the right procedure can be instituted to contain the political in the form of publicly agreed rules. Hirst is critical of the need to think of the state as the vehicle by which conflict is mediated rather than the state as a site of conflict and struggle: “To view the state as the settled and orderly administration of a territory, concerned with the organization of its affairs according to law, is to see only the stabilized results of conflict.”³⁹ Liberal conceptions of the political are so concerned with the preservation of order that they do not pay attention to the constitutive foundations of order. The Schmittian concept of the political, contrastingly, is concerned with the autochthonous conditions of the political; its constitutive origins and how these are linked to the capacity to command obedience. Liberalism has taken decision out of the consideration of the political. Rawlsian accounts of the political subject rest upon the Kantian precept of free and equal choice in the public domain. The subject is a *free and equal chooser*. Rawls notes that for Kant:

... a person is acting autonomously when the principles of his actions are chosen by him as the most adequate possible expression of his nature as a free and equal rational being. The principles he acts upon are not adopted because of his social position or natural endowments, or in view of that particular kind of society in which he lives or the specific things that he happens to want. To act on such principles is to act heteronomously. Now the veil of ignorance deprives the persons in the original position of the knowledge that would enable them to choose heteronomous principles. The parties arrive at their choice together as free and equal rational

³⁹ *Ibid.*

persons knowing only that those circumstances obtain which give rise to the need for principles of justice.⁴⁰

Being subject to an external order (heteronomy) is actively discouraged by liberal reason; this is because each subject is compelled to follow the reason that lies within her or his self. This dislike of heteronomy constitutes a central plank in liberal political epistemology. Hayek, most notably, has contempt for forms of order that are achieved by means of intentional action. The Hayekian distinction between *cosmos* and *taxis* demonstrates the liberal desire to keep heteronomy at a distance from considerations of political and/or public reason.⁴¹ *Cosmos* signals the spontaneity of order, allowing for the effective and non-coercive production of order without the need for external forms of justification. *Taxis* stands for the contrivance of the political, produced under the yoke of norms that are external to the subject and consequently are not of the subject's own choosing. Rawls makes things more complicated by asking the subject to think in terms of the veil of ignorance arguing that this provides the conditions for "pure procedural justice."⁴² The Rawlsian approach does not presuppose the content or the teleology of the subject – *what* the subject strives for and *why* – but it does nonetheless depend on the claim that justice is the first virtue of social institutions.⁴³ Schmittian reason, on the other hand, must presuppose the content of the political. Decisionism, when justified in terms of the supreme emergency, is pure heteronomy. This is because stability is linked to the need for democratic homogeneity. The functioning of political community is reliant on the capacity of the sovereign to think in terms of amity lines and, in so doing, act decisively.

⁴⁰ John Rawls, *A Theory of Justice*, (Oxford: Oxford University Press, 1973), p. 252.

⁴¹ A distinction between *cosmos* and *taxis* is relevant to the current discussion because the liberal emphasis on *laissez faire* decision-making involves the abandonment of the political community from decisions about what constitutes order. Schmitt is unwilling to allow the political to be determined by an unplanned order. This is evident in his criticisms of the market as a way of ordering politics. See F A Hayek, *Law, Legislation and Liberty: Vol. 1, Rules and Order* (Chicago: University of Chicago Press, 1973), p. 37.

⁴² *Ibid.*, p. 132.

⁴³ *Ibid.*, p. 3.

Hirst offers a different understanding of the political compared to Rawls. Whereas Rawls presents the political in terms of the *concretisation of justice* Hirst conceives the political as the *concretisation of struggle*. There are both ethical and historiographical consequences of talking about the political as struggle. The ethical consequence is that the political project (“the stuff of politics”) cannot be totalised; the foundational contexts of the political are always subject to contingency and are thereby revisable subject to certain constraints. The historiographical consequence is that historical closure is never obtainable; to claim that we have arrived at the end of history or achieved the right conditions for justice is to overlook the essentially contested dimension of the political. Schmitt allows Hirst to attack at the procedural core of the dominant tradition of liberal thought which reduces legality down to its institutional context. “Liberalism,” he claims, “relies on a constituting political moment in order that the ‘sovereignty’ implied in democratic legislatures be unable to modify at will not only specific laws but also law-making processes.”⁴⁴ Or expressed differently, liberalism needs to forget how it is that law became constituted as ‘law’ in order for it to be procedurally effective.⁴⁵

What is unique about Schmitt according to Hirst is that he provides a different analysis of law compared with public law doctrine. Schmitt talks in terms of substantive norms rather than procedural norms; this means that “endless debates about principles of political obligation or the formal constitutional powers of different bodies” are irrelevant in the face of the need for a sovereign who determines the basis of the decision.⁴⁶ Since sovereignty is understood by Schmitt in terms of the exception this has implications for the usage of the terms ‘sovereign’ and ‘sovereignty’ across a range of discourses. The sovereign subject (as a neo-Kantian construction in Rawls) or the sovereign state (as a neo-realist construction in international politics) is theorised from the perspective of the *outside*. “Sovereignty,” according to Hirst, “is *outside* the law, since the actions of the

⁴⁴ Paul Hirst, *op. cit.*, p. 11.

⁴⁵ Hirst argues that liberal conceptions of law are thereby “threatened by a condition of politics which converts the ‘rule of law’ into a merely formal doctrine. If the ‘rule of law’ is simply the people’s will expressed through their representatives, then it has no determinate content and the state is no longer substantively bound by law in its actions.” *Ibid.*

⁴⁶ *Ibid.*

sovereign in the state of the exception cannot be bound by laws.”⁴⁷ This Schmittian observation undermines the very basis of public law doctrine and, more critically, represents a serious challenge to procedural methodology in political thought. This is because the ‘rule of law’ cannot be described as the embodiment of objective conditions of legality or lawfulness. Hirst expresses this in his claim that “the sovereign determines the possibility of the ‘rule of law’ by deciding on the exception.”⁴⁸

Hirst resists the existentialism implicit in Schmitt’s account of the decision. This is because he thinks Schmitt is more concerned with stability of state form and institutional practice than appealing to an existential order that exists beyond the political community. “While the state of exception can know no norms,” Hirst argues, “the actions of the sovereign within the state must be governed by what is prudent to restore order. Barbaric excess and pure arbitrary power are not Schmitt’s object. Power is limited by a prudent concern for the social order; in the exception, “order in the juristic sense still prevails, even if it is not of the ordinary kind.””⁴⁹ Schmitt’s normative order thereby involves the *concretisation of order*. This normative order is substantively grounded, emphasising the *content* of the political above the *process* of the political.

For Hirst, Schmitt’s concept of the political demands a close inspection of the workings of the constitutive outside in both law and politics. The field of possibility (and impossibility) in law and politics depends upon the constitutive domain. This constitutive domain performs a legitimating function; that is to say, that which lies within the law is said to be legal, that which lies outside the law is said to be illegal. The literalist image of law treats legality as prohibition articulated publicly and codified constitutionally. Schmitt’s gives expression to a more sinister image of law; law is still conceived in terms of prohibition but this need not be publicly articulated nor codified formally through a constitution. Thus when Schmitt talks about legality as the chance to compel obedience

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, pp. 11-12.

⁴⁹ *Ibid.*, p. 12.

(see Chapter 4) there is the recognition that law is formed through extra-legality rather than legality. This challenges the ontological basis of liberal conceptions of law. Hirst argues that:

Schmitt's doctrine thus involves a paradox. For all its stress on friend-enemy relations on decisive political action, its core, its aim, is the maintenance of stability and order. It is founded on a political non-law, but not in the interest of lawlessness. Schmitt insists that the constitution must be capable of meeting the challenge of the exception, and of allowing those measures necessary to preserve order. He is anti-liberal because he claims that liberalism cannot cope with the reality of the political; it can only insist on a legal formalism which is useless in the exceptional case.⁵⁰

Schmitt is thereby invoked as part of a wider attack on legal and political formalism. This involves the rejection of reconstructive or interventionist frameworks that offer a way out of Schmitt's friend and enemy distinction. Deliberative democracy and "ideal speech" do not provide a final resolution to the problem of the political. This is because discussion, as Schmitt recalls in *Concept of the Political*, is unable to adjudicate between competing claims involving questions of truth. Hirst thinks it impossible for discourse ethics (Habermas and Benhabib) to discover an "emancipatory interest" between subjects that will provide the conditions which will allow them to seek "truth in common."⁵¹ The solution offered by Hirst is, in fact, no solution. This means that enemies should not talk to each other, leading him to claim that: "Schmitt is probably right. Enemies have nothing to discuss and we can never attain a situation in which the friend-enemy distinction is abolished. Liberalism does tend to ignore the exception and the more resolute forms of political struggle."⁵²

This does not mean that Hirst endorses the *telos* of Schmittian ethics. In fact, Hirst is similar to Mouffe in demanding a new ethical rendering of the Schmittian political dilemma. Taking the *concretisation of struggle* as the foundation of the political means

⁵⁰ *Ibid.*, p. 14.

⁵¹ *Ibid.*

⁵² *Ibid.*

that Hirst does not endorse the Schmittian discourse on sovereignty; contestability rather than obedience becomes the operating system of the citizen. There is an inherent paradox in Schmitt's concept of the political which Hirst, surprisingly, does not draw attention to. The Schmittian discourse on sovereignty, involving the chance to compel obedience, is dependent upon "normal" norms rather than "abnormal" or "extra-normal" norms. For sovereignty to operate according to Schmittian precepts requires both the norm and the exception. It makes little sense to prioritise the norm above the exception or the exception above the norm. This is because norm development involves the dialectical struggle between the normal and the extra-normal (as Mannheim's sociology of knowledge demonstrates). Yet the notion of dialectic suggests that there is the possibility of achieving a synthesis between thesis and antithesis. The emphasis Hirst places on *struggle* suggests that no final resolution is possible; since this would mean admitting (with Hegel, Kojève, and Fukuyama) that history possesses the means to resolve structural conditions within history, thought and the political community.

Schmitt's concept of the political can thus be regarded as highly normalised. This is despite the fact that Schmitt works from an exceptional concept of the political. For the sovereign to compel obedience requires the normalisation of political community: *accepting* the rule rather than *excepting* the rule. The difference between Schmitt and Habermas is that the domain in which normalisation takes place is different. For Schmitt, normalisation involves the tacit acceptance of the power relations involved in the coercive concept of obedience. For Habermas, normalisation takes place in the constitutional framework of political community; involving the recognition that norms must be given expression through institutional frameworks which are non-coercive and non-distorted.

Hirst is correct in drawing attention to the fact that the exception has the potential to become the norm. "In the Weimar Republic," he notes, "the state of the exception was

close to being the norm.”⁵³ Depicting Schmittian ethics as exceptional is to take Schmitt’s concept of the political at face value, overlooking the background conditions of the political that depend upon a highly normalised regime in which the subject is clearly distinguished from the sovereign. This normalisation extends to Schmitt’s framing of the concept of the political in terms of dominion and mastery – order is the means by which dominion and mastery are justified.⁵⁴ Schmitt attacks liberalism for failing to come to terms with the implicit danger of the political, neglecting to take seriously the challenge of the friend and enemy distinction by focusing on the politics of everyday life. Hirst accepts this claim in arguing that “political stability has permitted complacency in political theory, and, indeed, has required it as one of its conditions.”⁵⁵

Both Schmitt and Hirst have little faith in the capacity of discussion, as the public articulation of transcendental reason, to frustrate binaries in human thought and political community. The existence of a formal norm – enacted constitutionally, legislatively, and/or through a system of ethics – does not resolve the fact that political community is constituted through power relations. For Mouffe, these power relations rest upon the inescapability of exclusion from the political community. The we/they distinction cannot be overcome through a procedural turn. For Hirst, the ethical significance of thinking of the political in terms of *struggle* means that political stability is always provisional stability: “If we take Schmitt’s claim that ‘sovereign is he who decides on the exception’ seriously, then most of our formal constitutional doctrines are junk.”⁵⁶ If we accept Hirst’s claim that the essence of the political is struggle then this would involve the rejection of the Schmittian discourse on sovereignty. This is because Schmitt’s account of sovereignty involves a final decision. Hirst, on the other hand, emphasises the ongoing nature of the political as involving perpetual struggle.

⁵³ *Ibid.*, p. 15.

⁵⁴ It is important to keep in mind that Schmitt’s concept of order does not involve the exception at work. Schmitt’s understanding of order is highly normalised because it works towards the stabilisation of power relations across and between states.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, p. 17.

For this reason there is less ethical violence in Hirst's use of Schmitt than in Schmitt's concept of the political itself. Nonetheless, if both mastery and dominion were taken out of their respective accounts of the political there would be very little to distinguish the political from other forms of discourse. The *differentia specifica* of the political thus disappears, making a mockery of Schmitt's desire to advance an autonomous concept of the political. Mastery is the unstated *differentia specifica* of the political for Schmitt. For the sovereign to possess sovereignty requires another to assume an inferior subject position; mastery, as was outlined previously, involves the state or condition of being master over and above other subject positions. Schmitt's version of sovereignty cannot function without mastery and dominion. Thinking of sovereignty in terms of liberal conceptions of the subject (the Kantian autonomous subject) does not offer a way out of the dilemma of mastery. Both the liberal and decisionist versions of sovereignty are deeply rooted in the notion of the thinking, deciding, and determining subject: *mastery makes the sovereign*.

2.5 Engaging with violence: Žižek

Another dimension to Schmitt's revival in radical democratic thought concerns the way in which liberal-democratic politics constructs itself as politics cleansed of violence. Both Mouffe and Hirst draw attention to the way in which liberal thought marginalises the adversary and, in so doing, denies opportunities for political struggle. Slavoj Žižek's engagement with Carl Schmitt also deals with the limits of proceduralism in liberal thought. Žižek links the revival of interest in Carl Schmitt to the failure of proceduralism to come to terms with the intrinsic violence of the political. For this reason liberalism disavows the political.

Žižek does not look to Schmitt in order to recuperate the political. Žižek notes that the Schmittian political universe works at the extremes of discourse. The Schmittian concept of the political frames itself in relation to the liberal sublimation of the political; desublimation must thereby exaggerate the normative order implied by the use of the term "the political." This should be kept in mind when evaluating Schmitt's concept of

the political. Žižek is correct to emphasise the fact that both Schmitt and the dominant liberal discourse are partners of modernity. This leads to the following paradox for Žižek: “the only way to oppose legal normative formalism is to revert to decisionist formalism – there is no way of escaping formalism within the horizon of modernity.”⁵⁷

Žižek focuses on the psychoanalytic dimension of the Schmittian concept of the political. The exception is imbued with a violent, psychoanalytic energy. The exception is a “violent gesture” which results in the “intrusion of the Real” into everyday discourse. Sovereignty thus becomes the act of establishing a normative order through violence. This violence is symbolic before it is actual. Žižek argues that “[w]hat is properly modern in Schmitt’s notion of the exception is thus the violent gesture of asserting the independence of the abyssal act of free decision from its positive content.”⁵⁸ What really matters is the act of establishing the normative order, not the normative order itself. Being able to establish an order is the *modus operandi* of the political. Normative order should not be thought of in Habermasian terms as the unforced “force of the better argument.”⁵⁹ For Žižek, normative order consists in the act of establishment. Norms about law, politics, and the sovereign are disclosed only through being alert to the “violent gesture” that places the norm within a symbolic normative order. Norms without symbolic order are not political norms. Proceduralism involves a forgetting of the symbolic normative order that created the procedure in the first place.

Žižek is typical of those who have revived Schmitt in drawing attention to the inherent paradoxes of his thought. At the same time, these paradoxes reveal the workings of the political in contemporary discourse. Schmitt shares with liberalism the horizon of modernity in his thought. Proceduralism and decisionism result in different conclusions in relation to the normative but they nonetheless depend upon formalism. This paradox

⁵⁷ Slavoj Žižek, ‘Carl Schmitt in the Age of Post-Politics,’ in Chantal Mouffe (ed.), *The Challenge of Carl Schmitt*, (London: Verso, 1999), p. 19.

⁵⁸ *Ibid.*, pp. 19-20.

⁵⁹ Jürgen Habermas, *Moral Consciousness and Communicative Action*, (Cambridge: MIT Press, 1990), pp. 158-159.

has consequences for the way in which modern authority is to be justified. Both liberalism and Schmittian radicalism need to appeal to the state as a means of justifying sovereignty. The difference between liberal and Schmittian precepts is the way in which stately authority is to be justified. Žižek claims that this involves the difference between conditional authority (liberalism) and unconditional authority (Schmitt). Conditional authority is kept in check through public rules and processes that involve working towards the right procedure in discourse. Unconditional authority is ungrounded and it involves, according to Žižek, the “return to an unconditional authority which cannot be grounded in positive reasons.”⁶⁰

Thus, Schmitt shares with liberalism the formalism of modernity. This formalism is best represented in the shared site of the political operating in both liberal and Schmittian thought; namely, the state. The primary difference between these accounts is the type of justification involved. Liberalism is concerned with rule-based reason. Schmitt, on the other hand, does not think in terms of the rule. Žižek draws attention to the way in which Schmitt justifies the state (and the identity of the Sovereign) when he claims that:

...the properly modern God is the God of predestination, a kind of Schmittian politician who draws the line of separation between Us and Them, Friends and Enemies, the Saved and the Damned, *by means of a purely formal, abyssal act of decision, without any grounds in the actual properties and acts of those concerned* (since they are not yet even born).⁶¹

In this respect Žižek is similar to Habermas in asking that Schmitt’s concept of the political be assessed theologically. Žižek’s reading of Schmitt thus emphasises the ‘irrational’ nature of authority. This authority is ‘irrational’ because it is justified without reference to the contemporary horizon. Schmitt’s decisionism shuns legality based on precedence (since thinking in terms of the exception means thinking beyond pre-existing norms). This means that sovereignty should be understood as an unscripted ethic, defying

⁶⁰ *Ibid.*, p. 20.

⁶¹ *Ibid.*, p. 20.

the proceduralism of liberalism but needing the formalism of the state under modernity. For Schmitt modernity must be *radicalised*. Schmitt's concept of the political can thus be regarded as the symbolic structuring of the normative order of modernity according to radical ethics. The political denotes one of the many possible sites of politics not the final site of politics. Articulating "the political" involves a kind of 'violent gesture' for Žižek. To claim that "this *is* political" or "this *is not* political" is to seek to arrange discourse according to symbolic norms. Opening or foreclosing the possibilities of a discourse is a violent act, since it involves an appeal to a symbolic normative order. Returning to Mouffe, this means that concepts of the political are simultaneously inclusionary and exclusionary.

Žižek uses Schmitt to identify the poverty of the political in contemporary discourse. He identifies a range of positions which, in differing amounts, disavow the political. Schmitt's radicalised conception of the political should thus be seen as a radical response to the failure of liberal-democratic thought to conceive of the state in terms of the political. Žižek endorses the Schmittian claim that liberalism has neglected the political. "The entire history of political thought," Žižek claims, is ultimately nothing but a series of disavowals of this political moment, of the proper logic of political antagonism; there are three main versions of this disavowal." These three disavowals of the political are given the following terms by Žižek: (a) *arche-politics*; (b) *para-politics*; and (c) *meta-politics*.⁶² All of them are concerned with sublimating the primary, libidinal energy that endows politics with normative force.

These three categorisations of anti-politics should be kept in mind when examining Schmitt's framing of "the political." *Arche-politics* refers to "the 'communitarian' attempt to define a traditional, close, organically structured homogenous space which allows for no void in which the political moment-event can emerge."⁶³ Thick communitarianism entails the articulation of a symbolic normative order without

⁶² *Ibid.*, p. 28.

⁶³ *Ibid.*

reference to the different subject positions that are occupied within that same political community. *Arche-politics* involves architectonic mastery over the political; the possible forms that the political can take are prefigured by the communitarian desire to rigidly define the normative order of political community.⁶⁴

Para-politics, on the other hand, is characterised by a refusal to endow politics with normative force. This means that discourse is understood regulatively rather than normatively. This disavowal stems from the fact that the symbolic structuring of the normative is overlooked. Žižek describes *para-politics* as “the attempt to depoliticize politics – one accepts political conflict, but reformulates it into a competition, within the representational space, between acknowledged parties/agents, for (temporary) occupation of the place of executive power.”⁶⁵ Liberal constitutionalism pacifies the antagonism of the political; inserting into discourse the notion that conflict is resolvable by means of the right procedure. Žižek locates *para-politics* in the theoretical project of Habermasian and Rawlsian ethics.⁶⁶

Meta-politics does not attempt to resolve conflict but merely shifts the scene of politics to another domain. According to Žižek “the political conflict is fully asserted, *but* as a shadow-theatre in which events whose proper place is on Another Scene (of economic processes) are played out; the ultimate goal of ‘true’ politics is thus its self-cancellation, the transformation of ‘administration of people’ into ‘administration of things’ within a fully self-transparent rational order of collective Will.”⁶⁷ *Meta-politics* involves the colonisation of the political by other forms of discourse, primarily economic. In thinking of the political as a vocabulary which is not specific to politics anything potentially is

⁶⁴ Žižek does not acknowledge the similarities between *arche-politics* and the Schmittian concept of the political. Both perspectives involve an “organically structured homogenous space.” *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Žižek argues that Habermasian or Rawlsian ethics are perhaps the last philosophical vestiges of this attitude: the attempt to de-antagonize politics by formulating the clear rules to be obeyed so that the agonistic procedure of litigation does not explode into politics proper.” *Ibid.*

⁶⁷ *Ibid.*

political.⁶⁸ Definitional rigidity is abandoned in favour of conceptual openness. In so doing, the ability to talk of the political in terms of autonomy – the *differentia specifica* of the political – is lost.

These three categorisations – *arche-politics*, *para-politics*, and *meta-politics* – symbolise a way of thinking about the political that Žižek thinks distorts the political. But treating Schmitt as recuperative of the political should be done cautiously according to Žižek. Schmitt does not recuperate the political. This is because his strategic starting point is not conceptual but political; namely, the combative dimension of the political is present in Schmitt's framing of the political vis-à-vis other conceptions of the political. This framing does not affirm the political but, ironically, leads to the same disavowal of the political that exists in liberal and communitarian thought: "Far from simply asserting the proper dimension of the political, he [Schmitt] adds the most cunning and radical version of the disavowal, what we are tempted to call *ultra-politics*: the attempt to depoliticize the conflict by bringing it to its extreme, via the direct militarization of politics."⁶⁹

Depicting Schmitt's concept of the political as *ultra-politics* involves Žižek placing himself at a critical distance from the violent order implied in Schmitt's concept of the political. Žižek does not want to sublimate this violence but to instead argue that this violence constitutes an extreme response to the repression of the political in both liberal and communitarian thought. Žižek uses the tools of psychoanalysis to claim that "the 'repressed' political returns in the guise of an attempt to resolve the deadlock of political

⁶⁸ A good example of *meta-politics* Vaclav Havel's call for anti-political politics. Havel demands that we recapture the mystery of the Absolute in calling for a new type of political discourse. This discourse of "anti-political" politics attempts to delink the political from the horrors of modernity, especially its tendency to render power mere technology. Havel issues a plea for humans to succumb to the powers that operate above and beyond them: "Humans simply are not God, and playing God has cruel consequences. Humans have abolished the absolute horizon of their relations, denied their personal 'pre-objective' experience of the lived world, while relegating personal conscience and consciousness to the bathroom, as something so private that it is no one's business." Vaclav Havel, 'Anti-Political Politics', in John Keane (ed.), *Civil Society and the State: New European Perspectives*, (London: University of Westminster Press, 1998), p. 386.

³⁶ Slavoj Žižek, 'Carl Schmitt in the Age of Post-Politics,' p. 29.

conflict by its false radicalization – by reformulating it as a war between ‘Us’ and ‘Them,’ our enemy, where there is no common ground for symbolic conflict.”⁷⁰

Schmitt thereby stands charged with the “false radicalization” of the political, the liberal sublimation of the political finally breaks free into its opposite. Schmitt’s concept of the political is thus liberalism refracted; having been kept at bay for so long, Schmitt delves deeply into this repressed domain and amplifies the original site of repression. The political thus takes exaggerated form in Schmitt and, in so doing, disavows the political. Schmitt’s disavowal stems from the fact that the logic of friend and enemy becomes the primary expression of the political to the detriment of other logics, vocabularies and images of politics. Since liberalism has repressed the political (both Schmitt and Žižek agree on this point) Schmitt’s substitute concept of the political will amplify that which has been repressed and, in the process, will itself repress aspects of the political. Psychoanalysis – the study of the condition and status of the unconscious in human experience – is thus useful for understanding the transformation of the political in both liberal and Schmittian ethics. For Žižek ‘political philosophy’ can thereby be understood as a psychoanalytic endeavour; how it is that concepts are formed defensively through processes of sublimation and desublimation “against some traumatic experience in psychoanalysis.”⁷¹ Schmittian *ultra-politics*, involving the ecstatic enjoyment of violence, aims at the desublimation of the political but, ironically, ends up inverting the spectrum of liberal ethics. The liberal rejection of politics, described by Žižek as post-political, involves the following:

In post-politics, the conflict of global ideological visions embodied in different parties who compete for power is replaced by the collaboration of enlightened technocrats (economists, public opinion specialists . . .) and liberal multiculturalists; through a process of negotiation of interests, a compromise is reached in the guise of a more or less universal consensus. The political (the space of litigation in which the excluded can protest the wrong/injustice done to them) foreclosed from the Symbolic then returns in the Real, as new forms of *racism*.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, p. 29.

Žižek's reading of Schmitt in terms of *ultra-politics* involves a psychoanalytic claim about the impossibility of returning the repressed subject back to its original form; rearticulation will unconsciously incorporate the symbolic normative order that led to its initial displacement. For Žižek this is to be seen in the emergence of aggressive nationalism in Eastern Europe. This involves "the violent emergence of depoliticized 'pure Evil' in the guise of 'excessive' ethnic or religious fundamentalist violence."⁷² Grigoris Ananiadis argues that events in places like Kosovo attest to the "disquieting actuality" of Carl Schmitt.⁷³ Žižek thinks that liberalism is unable to deal with the problem of 'excessive' violence and thereby needs Schmitt as reminder that political processes can be radically undermined when confronted with the force of the unconscious. Žižek thinks that despite the post-political trajectory in modern liberal thought it is important to keep Schmitt in close view:

*... the reference to Schmitt is crucial in detecting the deadlocks of post-political liberal tolerance: Schmittian ultra-politics – the radicalization of politics into the open warfare of Us against Them discernible in different 'fundamentalisms' – is the form in which the foreclosed political returns in the post-political universe of pluralist negotiation and consensual regulation. For that reason, the way to counteract this re-emerging ultra-politics is not more tolerance, more compassion and multicultural understanding, but the return of the political proper, that is, the reassertion of the dimension of antagonism which, far from denying universality, is cosubstantial with it.*⁷⁴

The liberal discourse on toleration is not universalizable according to Žižek. It is for this reason that liberal norms cannot be deployed strategically for the sake of resolving antagonisms that do not belong to the liberal world. Schmitt represents a movement towards the "gesture of *politicization* proper."⁷⁵ When violence becomes ecstatic, providing enjoyment for the subject, liberal political epistemology is useless. Liberalism

⁷² *Ibid.*, p. 31.

⁷³ Grigoris Ananiadis, 'Carl Schmitt on Kosovo, or, Taking War Seriously,' in Dušan I. Bjelić and Obrad Savić (ed.), *Balkan as Metaphor: Between Globalization and Fragmentation*, (Boston: MIT Press, 2002), p. 119.

⁷⁴ Slavoj Žižek, 'Carl Schmitt in the Age of Post-Politics,' p. 35.

⁷⁵ *Ibid.*, p. 34.

lacks the capacity to deal with the phenomenology of violence. The real and ultimate significance of violence (its phenomenology) is misjudged by the liberal. Looking upon violence as the failure of the procedure the ethical voice of antagonism is left undetected.⁷⁶ Schmitt, contrastingly, is phenomenologically closer to violence in thinking of the political as a pure form in which friend and enemy bring each other into existence. Political reason is miraculous, emergent from real life conflicts. Proceduralism is routine, submerging antagonism in the name of the right procedure.

Žižek is correct in stressing the *ultra* dimension to Schmitt's concept of the political. Talking in terms of psychoanalysis means that Žižek's reading of Schmitt's concept of the political is shaped through the unconscious rather than conscious conceptual mastery. Žižek is identifying the problems of thinking autonomously about the political and, as noted above, calling for a return to the political proper. Žižek's account of the political is not exclusively about the conscious construction of 'politics' but involves a consideration of how the subconscious shapes the political itself.

2.6 Proceduralists against Schmitt: Habermas

Mouffe, Hirst and Žižek look to Schmitt as a way of challenging the normative vocabulary associated with liberal-democratic politics. This normative project thinks that fissures or divisions within a political community can be resolved through the discovery of the right rule or procedure. Habermas, on the other hand, wants to inoculate normative political theory from its Schmittian challenge. Habermas attributes the revival of interest in Carl Schmitt to the post-modern critique of modernity. Schmitt offers a critique of the ethical impulse of modernity, specifically the desire to establish a normative framework to guide the conduct of the political at both the domestic and international level. Habermas differs from Mouffe in the extent to which Schmitt's critique of modernity is

⁷⁶ In talking in terms of the ethical voice of antagonism my intention is not to say that violence can be ethical. The claim being made is that violence too has an ethic and, even though it does not comply with an ethical ideal (involving a conception of the good) it does nonetheless constitute a system of ethics. For this reason Schmitt prompts us to think about how we define ethics. Should ethics be defined in terms of an ideal model that governs the conduct of conduct or should it be defined in terms of the establishment of an ethic that provides the backdrop for actual conduct?

to be taken seriously. Dismissing the Schmittian division of the political into the relation between friend and enemy as “superficial” Habermas expresses concern that contemporary political theory has looked to an enemy of constitutionalism as a basis for radical democratic thought.⁷⁷ Habermas documents the connections between Carl Schmitt and Martin Heidegger, both thinkers are tainted by their involvement with the Third Reich. This involvement stems from their Roman Catholic milieu involving a mutual “search for an intact spiritual authority.”⁷⁸ With this spiritual principle driving their respective accounts of political order Habermas thinks it no wonder that their philosophy culminates in unqualified support for the Führer.

Habermas focuses initially on Carl Schmitt’s support for the Third Reich and, more critically, on his refusal to publicly apologise for this involvement.⁷⁹ He calls into question Schmitt’s ‘political’ judgement. He credits Schmitt’s involvement with the legal quagmire as a consequence of his political theology and its critique of the secular state emergent from modernity. Habermas treats Schmitt as arch critic of the normative proceduralism associated with modern constitutionalism. This political theology “rejects a secularized concept of politics and along with it democratic procedures as a basis for legitimating law, twists a concept of democracy that has been deprived of its deliberative heart into one involving the approval of the educated masses, opposes the myth of an

⁷⁷ Habermas argues that “[t]he controversy about the concept of the political – reduced to Schmitt’s foe-friend relationship – is superficial.” Jürgen Habermas, *A Berlin Republic: Writings on Germany*, trans. Steven Randall, (Cambridge: Polity Press, 1998), p. 112.

⁷⁸ It is important to note how scathing Habermas is in his treatment of Schmitt and the revival in contemporary political thought: “They are spiritually united by an early exposure to the critique of modernity in a Roman Catholic milieu, a marriage more or less estranged from the church, their stubborn provincialism, and certain insecurity in relation to everything urban, the generational life experience of World War I and the Versailles complex, as well as by the existentialist breakthrough from ‘Goethe to Hölderlin’ and especially the turn against humanism, a Latin-Catholic or Greek-new-pagan critique of Enlightenment traditions, whether under the sign of Donoso Cortez or Nietzsche, an intellectually elitist disdain for the party state, democracy, the public sphere, and discussion, scorns for everything egalitarian, a truly panicky fear of emancipation, and the search for an intact spiritual authority – and then, of course, by the Führer, who was to be their common fate.” *Ibid.*, p. 112.

⁷⁹ Habermas notes that, unlike Heidegger, Schmitt did not renounce his involvement with the Third Reich: “In Carl Schmitt’s case things were different. He refused to undergo a de-Nazification process, so that he – an exception even among the heavily compromised jurists – was not granted permission to return to the university, even later on.” *Ibid.*, p. 109.

aboriginal national unity to social pluralism, and denounces the universalism of human rights and human morality as a criminal fraud.”⁸⁰

Table 1.1: Contestations of the political in Carl Schmitt and Jürgen Habermas

Carl Schmitt	Contestations	Jürgen Habermas
Theology of the political	Epistemology	Secularisation of politics
Substantive ethics	Method	Procedural ethics
Unity of political community	Political Community	Pluralism of political community
Political obligation embedded in constitutional form	Constitutionalism	Human rights embedded in constitutional form
Decisionist democracy	Democratic functioning	Deliberative democracy

Habermas thereby stands in direct opposition to Carl Schmitt with radically different understandings concerning political epistemology and method, the ontology of political community, the value of constitutionalism, and the functioning of democracy. In questioning Schmitt’s ‘political’ judgement Habermas is attacking the core premises developed in *Concept of the Political* in relation to the autonomy of political. If Schmitt’s political judgement requires surplus categories of thought – in addition to the friend and enemy distinction – then the autonomy claim in the domain of the political is seriously undermined (see Chapter 4). Habermas accords theology a primary role in the Schmittian account of the political, signifying Schmitt’s dissatisfaction with the secular trajectory of Enlightenment reason and the modern state.

In claiming that Schmitt was “pathologically incapable of judging” Habermas attacks Schmitt on the very terrain upon which his account of the political depends.⁸¹ Judgement

⁸⁰ *Ibid.*, p. 112.

is at the core of Schmitt's decisionist ethic. The essential character of the political is that it entails judgement (or determination) of the friend from enemy and, in so doing, involves the operation of a supralegal ethic which is *adjudicatory* rather than *justificatory*. For Schmitt to erect a sphere of immunity around conduct during war, invalidating the very notion of *jus in bello*, troubles Habermas.⁸² This is because Schmitt's legal ethic is unreservedly *adjudicatory*, meaning that the basis of decision matters less than the capacity of the decision to compel obedience. By allowing a justificatory legal ethic to enter the domain of the political this would signal the very end of its authoritativeness; the political is political because it adjudicates, it need not complicate matters further by requiring that this adjudication be compelled to account for itself by means of a justificatory ethic.⁸³

Habermas is concerned by the reintroduction of Schmittian ethics into contemporary political theory. This is because Schmitt is more concerned with the strategic dimensions of the political than political power as an analytical proposition. This strategic dimension is evident in Schmitt's need to come to terms with how the people are constituted politically, to use Mouffe's term. Habermas notes that according to Schmitt "[a] people welded together in a battle for life and death asserts its uniqueness against both external enemies and internal enemies."⁸⁴ For this reason it is the strategic dimension which determines the contour lines of the political, emergent when the physical and existential

⁸¹ *Ibid.*, pp. 113-114.

⁸² Habermas questions the capacity of Schmitt to employ political judgement. This is because what Schmitt understands as political Habermas regards as conduct hostile to the normative precepts of discourse. Habermas argues that "Schmitt was obviously pathologically incapable of judging the proportions of what happened and his own role in it; he denied everything and exculpates himself; he fulminates against the 'criminalizers in Nuremberg,' against 'the constructors of crimes against humanity and genocide'; he derisively says, 'Crimes against humanity are perpetrated by Germans. Crimes for humanity and perpetrated on Germans. That is the only difference.'" *Ibid.*, p.

⁸³ On the question of accounting for oneself see Judith Butler who argues that "[n]o account takes place outside the structure of address, even if the addressee remains implicit and unnamed, anonymous and unspecified." Butler is directing political ethics to take account of the referential conditions of justification and how these are bound up in shifting subject positions. Butler aims at a post-justificatory understanding of the subject which means that the subject need not account for herself unilaterally: "Suspending the demand for self-identity or, more particularly, for complete coherence, seems to me to counter a certain ethical violence that demands we manifest and maintain self-identity at all times and require that others do the same." Judith Butler, 'Giving An Account of Oneself,' *Diacritics*, Vol. 34, No. 4, 2001, pp. 26-27.

⁸⁴ Jürgen Habermas, *The New Conservatism*, (Cambridge: Polity Press, 1989), p. 129.

conditions of life are endangered. Habermas attacks Schmitt for reducing the political down to this “battle for life and death” for the sole reason that it turns the political into the single-minded pursuit of strategy above all other norms (since strategy itself is a norm amongst a field of other norms). What results is a reduced understanding of the political, meaning that something can only be described as political if it involves the Hobbesian fear of violent death. Habermas notes that for Schmitt “an event should be called political only if it refers, at least implicitly, to this extreme situation: all politics is essentially foreign affairs.”⁸⁵

For Habermas, Schmitt’s concept of the political should be understood *expressionistically* rather than *autonomously*. To say that Schmitt offers an expressionistic concept of the political is to reject as false the exclusive criteria established by Schmitt in the domain of the political. Associated with this expressionistic approach is the fact that universal reason, involving an appeal to the transcendental, is abandoned in favour of the emotional experience of the internal world. This expressionism means that the political becomes the subjective working out of amity lines; the subject, especially the sovereign subject, responds impulsively to threats (real, potential, or imagined) rather than establishing a framework to critically assess the nature of “threat.”

Habermasian reason does not renounce the Enlightenment separation between the “realm of obedience” and the “realm of the use of reason.”⁸⁶ Schmittian reason, on the other hand, collapses this “realm of obedience” into the “realm of the use of reason.” Sovereignty (as is explored in Chapter 3) thus becomes the chance to unilaterally compel obedience, to determine the range of possibilities through mastery in a particular domain.

⁸⁵ *Ibid.*

⁸⁶ See Michel Foucault’s influential account of the Kantian knowledge project arising from the Enlightenment: “The first of these conditions is that the realm of obedience and the realm of the use of reason be clearly distinguished. Briefly characterising the immature status, Kant invokes the familiar expression: ‘Don’t think, just follow orders’; such is, according to him, the form in which military discipline, political power, and religious authority are usually exercised. Humanity will reach maturity when it is no longer required to obey, but when men are told: ‘Obey, and you will be able to reason as much as you like.’” Michel Foucault, ‘What is Enlightenment?’ in Paul Rabinow (ed.), *Michel Foucault: Essential Works of Foucault 1954-1984*, (London: Penguin, 1997), p. 306.

The Schmittian account of sovereignty is heavily theologised, deriving stately authority from the power of the miracle. Habermas is correct in drawing attention to the fact that Schmitt's observations on political order are embedded in pre-modern understandings about power, sovereignty and the political. Schmitt may look to Hobbes to explain the allure of stately power under modernity but, at the same time, his epistemology is resolutely pre-modern. Habermas notes that Schmitt "celebrates in Hobbes the only major political theorist to have recognized in sovereign authority the decisionist substance of state politics."⁸⁷

This decisionist ethic is an essential component of Schmitt's account of political sovereignty. Habermas thinks that Schmitt has prematurely foreclosed the possibilities offered by Hobbes in criticising the normative project of constitutionalism and the state: "He [Schmitt] deplores in Hobbes the bourgeois theoretician who shrank from drawing ultimate metaphysical conclusions and who became against his will the ancestor of a constitutional state based on positive law."⁸⁸ As shall be argued in the following chapter, this paradox is an example of the uneasy position occupied by Schmitt in relation to modernity. Schmitt, it is claimed, wants the benefits of modernity (a coercive state form operating territorially) without the accompanying normative project of modern constitutionalism. Taking this into account means that Schmitt's autonomous account of the political is not as autonomous as originally thought.

Habermas attacks Schmitt's contempt for 'discussion' in democracy. For Habermas, discussion provides the means for ensuring that democracy functions in terms of a publicly accepted discourse of legitimacy. Discussion thereby involves the "democratic justification of political authority," allowing those within a political community to reflexively assess the conditions required for legitimacy.⁸⁹ For Schmitt to eliminate discussion from the political community – in the name of efficiency and decisiveness – is

⁸⁷ Jürgen Habermas, *The New Conservatism*, p. 130.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, p. 138.

to undermine the very legitimacy which he seeks to defend. Habermas defends the need for democracy to be normatively grounded.⁹⁰ “The normative foundations of democracy,” he notes, “continue to be debated, because on democracy’s self-understanding depend not only the stability of existing practice but also the criteria for critical evaluation.”⁹¹ Accordingly, Schmitt’s democratic model, with homogeneity as its grounding norm, does not satisfy the Habermasian requirement for discourse that critically engages with the constitutive processes of political community.

Carl Schmitt’s political and legal theory stands at a distance from modernity but, at the same time, must operate within its horizon. Habermas claims that the revival of interest in Carl Schmitt can be attributed to the post-modern abandonment of rationality. The *grand narrative*, as Jean-François Lyotard observed, has lost all credibility; the “*to be able*” [*pouvoir*] of modernity is no longer bound up with conceptions of political right.⁹² The death of the *grand narrative* means that political conduct can no longer be justified on rational grounds. Cloaking conduct in ‘rationality’ only serves to link conduct to a particular conception of political right. Lyotard expresses this in relation to Auschwitz; rationality is dissolved, modernity culminates in terror. Auschwitz symbolises the failure of modernity to delink conduct from political right. Lyotard argues that it profoundly disrupts the governing logic of modernity, expressed in the following maxim: “*All that is real is rational, all that is rational is real.*”⁹³ Habermas thinks that the challenge of rationality should be revisited by means of communicative ethics, providing the tribunal by which reason can adjudicate universally.

⁹⁰ Habermas is correct in drawing attention to the need for a normative basis for democracy, although there are some problems with the Habermasian account of normativity. Rather than claiming that Schmitt’s democratic model lacks normative foundations there is greater critical potential in exploring how this democratic model is, in fact, normatively constituted.

⁹¹ *Ibid.*

⁹² Lyotard provides an insightful discussion of the rupturing that has taken place between conduct and right. To claim *to be able* [*pouvoir*] to do something must be thought of independently from a *right to be able* to do something. There are close similarities between Lyotard’s concept of subjectivity and that developed by Judith Butler in her critical account of the unilateral subject. Both approaches can be described in terms of a critical discourse hostile to the notion of mastery as the determination of the political. Jean-François Lyotard, *The Postmodern Explained to Children*, (Sydney: Power Publications, 1992), pp. 40-41.

⁹³ *Ibid.*

Habermas is concerned that the abandonment of the rationality principle increases the potential for violence, both existential and physical. Habermas claims that despite the “clarity of his [Schmitt’s] language he retained the bearing of a metaphysician who descends into the depths and at the same time unmasks a base reality.”⁹⁴ Schmitt’s decisionist ethic refuses to allow for discursive and/or communicative forms of judgement. This is at odds with the Habermasian system of ethics, primarily because Schmitt’s account of sovereignty privileges the isolated judging subject above all other types of subjectivity (especially democratic forms). Schmitt wants to restore what Habermas describes as the “epistemic authority of the God’s eye view,” providing the state with the authority to determine what constitutes the miracle in public life.⁹⁵ Schmitt clings to the epistemic authority of the decision. As noted by Habermas:

He who decides in the exceptional situation is the one who is sovereign. And because the subversive forces always appear under the name of truth and justice, the sovereign who wishes to guard against the exceptional situation will also reserve the power to define what is publicly held to be true or just. His decision power is the source of all validity. The state alone determines the public creed of its citizens.⁹⁶

The power of the sovereign to determine the “public creed” is unrivalled in Schmitt. Where both Rawls and Habermas want to prevent thick conceptions of the public good determining the field of possibility within democratic community, Schmitt thinks it essential that the sovereign be willing to take a strong stand on matters concerning comprehensive doctrine. Habermas rightly condemns Schmitt for inverting the space set aside for private belief in Hobbes. The Hobbesian state, conceived in terms of the sovereign taking institutional form, was supposed to safeguard private conscience, instituting a positive political space in which limits were placed on the capacity of the state to unilaterally determine the shape of doctrine. Schmitt remains stoutly metaphysical in his understanding of state power, refusing to endorse the conclusions of

⁹⁴ Jürgen Habermas, *The New Conservatism*, p. 132.

⁹⁵ Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory*, (Cambridge, MA: MIT Press, 1998), pp. 165-201.

⁹⁶ Jürgen Habermas, *The New Conservatism*, pp. 130-131.

Hobbesian legal positivism in the domain of the political. Habermas argues that this means accepting that “positive law requires a political legislator who can no longer be tied to the superordinate norms of natural law—and to this extent is sovereign.”⁹⁷ Schmitt’s concept of supralegality demands that there always be a sovereign legislator to determine legality. The consequence is that legality becomes the chance to compel obedience (see Chapter 4). The fact that the sovereign legislator exists only at the state level – and never at the international level – means that there is no scope for truly international law and, unsurprisingly, less scope for the formation of cosmopolitan law.

Schmitt’s partial modernity thereby holds onto the pre-modern understanding of the sovereign, involving absolute mastery in the domain of the political. Schmitt thus places himself at odds with the conditional understanding of epistemic authority that emerges in the liberal-democratic account of political community. Schmitt, along with Heidegger, are scathing of any challenge to the absolute epistemic authority of the state according to Habermas. This is evident in Schmitt’s rejection of pluralism and constitutional form; the constitution should not have to answer to “indirect powers” (trade unions, associations, political parties) but should operate in terms of an authoritative structure for decision-making.

An authoritative structure for decision-making is an important component of Schmittian ethics, using the language of necessity to ensure that mastery plays a prime role in the determination of the political. Habermasian discourse ethics can be understood as an attempt to unencumber the political from the distortions produced by mastery; instituting an ethical framework that is not colonised by the communicative violence produced by mastery and dominion. Schmitt does not anticipate an ethic which is transformative of discourse; distortions are a necessary feature of the friend and enemy distinction. Vocabularies that depend on universal claims are thereby strategically positioned vocabularies, designed to underscore a particular regime of truth rather than to appeal to the concept of truth itself. Schmittian ethics are strangely grounded; it is acknowledged

⁹⁷ *Ibid.*, p. 131.

by Schmitt that to speak in terms of a universal humanity is to impose one's amity lines on the rest of the world (relativist claim); at the same time, it is important to note that Schmitt's "pseudorevolutionary answers" concerning the concept of the political rest on understandings about the timelessness of the friend and enemy distinction (universalist claim).

Where does Schmitt derive the authority to speak autonomously about the political (delineating its ontological condition through the friend and enemy distinction) at the same time as cautioning the professional politician to be mindful of the distortions produced when universalistic claims are made in relation to the political? Habermas attributes Schmitt's epistemic authority to a nostalgic desire for the authoritative in discourse. Schmitt is read as a reaction against the Weberian concept of politics with its emphasis on the routine operation of state power. Habermas notes that "in the 1920s, when Max Weber's sociological enlightenment had stripped state authority of its aura of kinship with reason and religion, the demise of right-wing Hegelianism left a painful void. At that time people wanted to put the loss of the aura behind them, but they could not reconcile themselves to the banality generated by an administrative state governed by party democracy."⁹⁸ Thus, when faced with crisis in the Weimar Constitution Schmitt looks to supraleignty as a means of establishing a structure that does not rest upon administration and/or deliberation. "The crisis," Habermas notes, "could be overcome only through temporary dictatorial use of the emergency paragraph forty-eight of the Weimar constitution; in the long run, however, it could be overcome only through the "total state."⁹⁹

According to Habermas the Schmittian account of "total state" contains a "kinship of spirit with the fascist intelligentsia."¹⁰⁰ The voluntaristic aspect of Schmitt's decisionist ethic turns the political into an occasion of grand will formation. Lacking constitutional

⁹⁸ *Ibid.*, pp. 134-135.

⁹⁹ *Ibid.*, p. 134.

¹⁰⁰ *Ibid.*, p. 137.

foundations, this voluntaristic ethic celebrates the capacity of *magnus homo* to assume mastery over all other wills. Habermas argues that despite Schmitt's attack on political romanticism, especially its tendency to turn the political into an aesthetic moment, he himself is captivated by the "aesthetics of violence."¹⁰¹ The normalisation of violence is thereby an important dynamic at work in Schmitt's account of the political. Clausewitz dominates Schmittian ethics; the assumption being that the price of moral concern (understood as weakness) in the domain of the political is state decay. Thus, Schmitt participates in, and perpetuates, the gendering of state form: to talk of an ethics of care in the domain of the political is to perform the greatest category error possible. This would mean opening up the autonomy of the political – the binary logic of friend and enemy – to horizons deemed to constitute a threat to the stability of state form.

2.6 Proceduralists against Schmitt: Heller

Habermas was concerned with Schmitt's rejection of constitutionalism as the carrier of normative standards in political life. Agnes Heller shares with Habermas a concern that Schmitt abandons normative questions in the framing of the political. Her focus is on the way in which Schmitt's construction of the political involves the radicalisation of violence in a political community. Heller's discussion of Schmitt's *Concept of the Political* focuses on the post-war demand for thought which comes to terms with what is specifically "political" about politics. Heller claims that this demand – expressed through Schmitt's autonomy thesis – symbolises the perversion of the political in contemporary thought. Talking in terms of "the political" misapprehends politics according to Heller. This is because Schmitt "transforms every thing from a "mere thing" into a "political thing.""¹⁰² The multiplicity of political life is reduced down to a single moment, where "the political" designates the definitive metavocabulary of conduct. Heller thinks of the political in non-Schmittian terms; the political is a "philosophic device" instituted to defend a normative landscape rather than to capture the essence of what is "political" about modern politics. Thinking of the political as a "philosophical device" means that

¹⁰¹ *Ibid*

¹⁰² Agnes Heller, 'The Concept of the Political Revisited,' in David Held (ed.), *Political Theory Today*, (Cambridge: Polity, 1991), p. 330.

Schmitt's autonomy thesis is demystified. Heller looks to Hannah Arendt for coming to terms with politics as a form of conduct, rejecting implicitly the existential claims made by Schmitt about the political constituting an autonomous domain. But in so doing, Heller takes Schmitt at face value endorsing the opinion that Schmitt thinks of the political exclusively in terms of the friend and enemy distinction. Heller claims, for example, that Schmitt's "concept of the political lies not in sovereignty, but in the binary category 'friend and foe.'"¹⁰³

In separating 'sovereignty' from the 'friend and foe' distinction Heller overlooks how the decision about friend and enemy is linked to a particular discourse on sovereignty for Schmitt. Heller's emphasis on the combative element of the friend and enemy distinction also reinforces the foreground of the political in Schmitt; namely, the political is to be assessed according to its capacity to generate conflict. Yet for this ethic to assume dominance across a political community requires that it be accepted as a foundational ethic by *all* subjects within the political community. This requires the creation of a discourse in which all subjects accept the foundational ethic of friend and enemy; pure coercion will not perform the task of building such a political community.

Heller claims that the concept of the political – conceiving the political as an autonomous abstraction – is a noticeably modern phenomenon. The political as a 'philosophic device' did not exist in pre-modern thought, since what was deemed to be political was associated with one's membership of a particular class.¹⁰⁴ To be political was to possess the ability to act according to the parameters established through membership of that political class. To operate in terms of "the political" thereby signals a new way of thinking about politics. Heller claims that "the concept of the political yields radical political philosophies," stemming from the fact that the autonomy demand tends to admit

¹⁰³ *Ibid.*, p. 332.

¹⁰⁴ Heller argues that both Greek and Roman political thought did not require an awareness of "the political" in abstraction. This was because these cultures "shared the quasi-naturalistic and therefore unproblematic view that only acts which have been decided upon and performed by the members of the political class(es), can be termed political." *Ibid.*, pp. 330-331.

the extreme into discourse.¹⁰⁵ In putting forward an autonomous concept of the political all other domains of thought and experience are foreclosed. Schmitt is more concerned with purity of political form than the consequences of political form. For this reason, Heller christens Schmitt “godfather of the concept of the political.”¹⁰⁶

Heller’s understanding of Schmitt is largely filtered through *The Concept of the Political* and, as such, gives too much credence to Schmitt’s autonomy thesis. Whilst Heller’s task is to engage critically with Schmitt, to put forward an alternative normative landscape, her understanding of Schmitt prematurely accepts the binary logic implicit in his account of the political. Schmitt does claim that categories of thought are embedded in a binary logic: friend and enemy, profit and loss, beauty and ugly, good and evil. But it is important to look beyond “the claim” and consider the background conditions of the political. If it can be demonstrated that Schmitt’s account of the political is, in fact, non-autonomous then it is necessary to examine the prior conditions of thought that condition the binary logic. Since Heller characterises Schmitt’s concept of the political in terms of a “permanent state of war against both external and internal enemies” the background conditions of Schmitt’s thinking on the political are overlooked, especially the relationship between sovereignty, theology, and a system of legality.¹⁰⁷

Heller shares with Mouffe a concern for the dynamics of exclusion that accompany the Schmittian concept of the political. Its “philosophical thrust” derives from the exclusion and, as a consequence of this, “it is therefore more than radical: it is an outright tyrannical formulation of the concept of the political.”¹⁰⁸ Whereas Mouffe’s thought remains firmly anchored in the horizon of Schmittian ethics (rearticulated in new, less oppressive ways) Heller’s horizon is resolutely Arendtian. Hannah Arendt is celebrated as the “only paradigmatic philosopher with a lifelong attachment to the concept of the political who

¹⁰⁵ *Ibid.*, p. 332.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*, pp. 332-333.

¹⁰⁸ *Ibid.*, p. 333.

was never committed to the extremes of political radicalism.”¹⁰⁹ This political radicalism is a necessary component of Schmittian ethics, but Heller attributes this radicalism to the binary logic of friend and enemy which conditions the political. It is claimed in the current discussion that Schmitt’s radicalism is derived from a decisionist ethic which rests upon an understanding of the supreme emergency; the supreme emergency gives rise to radicalism in the domain of the political.

Heller refutes the claim that talking about “the political” is only a matter that concerns the state of the discipline. To debate the terms of the political is not to engage in discussion about the applicability of paradigms for political understanding but has wider significance for Heller. Heller claims that the concept of the political concerns the “relevance or irrelevance of political philosophy to our times.”¹¹⁰ Despite her rejection of the normative foundations of Schmittian ethics Heller looks to the political to restore faith in the potential of political philosophy to generate positive outcomes in human history. The primary question for Heller concerns whether we should “aim at the restoration *status quo ante* with regard to the concept of the political, or are there other avenues to explore?”¹¹¹ Heller believes it is important to talk in terms of the political, contesting nonetheless the tyranny implicit in Schmitt’s concept of the political. In this respect she aims at the reconstruction of the political in her refusal to allow the *status quo ante* to dominate her thinking on the political.

The question of substantive *versus* procedural accounts of the political is a central theme of the current work. Heller provides insights in respect of this metatheoretical debate. Her proposed reconstruction of the political expressly affirms the value of substantive conceptions of the political above proceduralism. Yet Heller’s substantivism is fundamentally different to that of Schmitt; rejecting implicitly the exclusionary basis of Schmittian ethics: “This concept [the political] has to be substantively, but not

¹⁰⁹ *Ibid.*, p. 335.

¹¹⁰ *Ibid.*, p. 336.

¹¹¹ *Ibid.*

exclusively, defined. Moreover, the substantive definition must not be political in nature.”¹¹² Both Schmitt and Mouffe would take issue with Heller’s demand for a concept of the political which is not political in nature. Heller strives to advance a concept of the political that is neither dependent upon binaries of exclusion (the constitutive conditions of identity for Mouffe) nor worked out according to the logic of friend and foe (the foreground conditions of Schmitt’s concept of the political). She expresses this in the following terms:

The concept we are looking for must be an authentic concept of the political. It must either indicate what the thing is, which, if added to others, makes them ‘political,’ and/or it must pinpoint the domain in which any ‘thing’ that enters it will be transformed into a political ‘thing.’ The concept needs to contain and make manifest the tension between Ought and Is in its existence and *modus operandi* in modern societies. For example, if the substantive content given to the political is ethical in character, this ethical content cannot be merely normative, nor can it be merely empirical.¹¹³

Heller articulates the political in Arendtian terms, an ethic of free participation in the public sphere. Her concept of the political stresses the *concretisation of freedom* rather than the *concretisation of friends and enemies*. The modern concept of the political put forward by Heller aims at establishing a dialectic between Is and Ought that breaks down the traditional methodological question of normative *versus* empirical orders in thought.¹¹⁴ The political can thus be defined as “the practical realisation of the universal value of freedom in the public domain.”¹¹⁵ Heller thus liquidates Schmitt’s concept of the political by opening it up to questions of diversity and linking it to the substantive concern for freedom rather than the binary logic of Schmitt’s amity lines. In the domain of the political “no one or nothing is excluded in principle,” meaning that those who are called to politics (evocative of Weber’s concept of politics as vocation) are not predetermined by the distinction between friend and enemy. My concern with Heller’s definition of the political is that she links the political to a concept of publicity. The

¹¹² *Ibid.*, pp. 337.

¹¹³ *Ibid.*, p. 336.

¹¹⁴ *Ibid.*, p. 341.

¹¹⁵ *Ibid.*, p. 340.

Arendtian demand for publicity, involving a heroic conception of conduct, unintentionally excludes non-public persons.

The subaltern who cannot speak does not speak in Heller's publicity driven account of the political. Heller attacks existential philosophy (Schmitt, Heidegger, and Luckacs) for reducing the political down to an exclusionary moment. This exclusionary moment is signalled in the notion of "*collective* existential choice," the moment in which the political community decides *who* and *what* defines the "essence and existence of a community."¹¹⁶ Thinking of the political in terms of the *concretisation of freedom* does not provide a means of escape from the dynamics of exclusion; exclusion does not disappear when freedom becomes a foundational constitutional norm. Heller expresses the political in terms of 'freedom' yet fails to define the content of this freedom. The demand for authenticity, as noted above, is similar to Schmitt's requirement for a concept of the political which can be understood autonomously.

Methodologically, both approaches involve the closing down of political epistemology to a specific moment in politics. For Schmitt, this moment emerges in the decisionist ethic of the sovereign. Heller, contrastingly, thinks of this moment in terms of the concrete realisation of freedom. Both thinkers overlook how the political is embedded in overlapping discourses of knowledge – legality, sovereignty, and theology. Normatively, both Schmitt's and Heller's image of the political culminates in exclusion. Political community, as was detailed previously in relation to Mouffe, is demarcatory. Identity formation involves the establishment of boundaries between subjects; the notion of a genuinely intersubjective political community is illusory. This would require the formation and operation of a public sphere cleansed of power. Thus, advancing a non-political concept of the political would require the subject to occupy a position beyond the subject. This would require the formulation of an Archimedean point which, since it is formulated through subjectivity, can not hope to achieve the objective of universal transcendence.

¹¹⁶ *Ibid.*, p. 334.

Heller anticipates a concept of the political that has eliminated exclusion and conflict from its domain. Heller characterises this new concept of the political in terms of its “weak ethos.”¹¹⁷ Having left behind the Schmittian binary logic, especially its accompanying dynamics of exclusion, this new vision of the political is thoroughly deradicalised. Schmitt would contest the very basis of Heller’s political vision. What matters for them is the capacity of the political to occupy the extremes of discourse and, in so doing, reveal the development of the norm *in extremis*. Heller opposes political ethics that are radically grounded, focussing instead on the politics of everyday day as captured in her notion of the *concretisation of freedom*. “Radical political philosophies of our century,” she declares, “mythologized politics and juxtaposed political actions and choice with the allegedly banal concerns of daily life.”¹¹⁸ The current work accepts the dangers implicit in juxtaposing everyday life to the exceptional (emergency ethics); but at the same, it affirms the need for political theory to take seriously the conditions of the dire emergency and, more importantly, examine how these conditions are used strategically in the service of a regime of political order. The account of the political outlined here does not accept that political theory need to be a “dithyramb about the Great Event writ large nor a choreography for exceptional political movements.”¹¹⁹ But it does take seriously the consequences and dangers embedded in ethical thinking.

Heller thinks that political theory is best served when aesthetic values – elegance, the sublime, perfection – are sublimated to freedom in the case of conflict within a political community.¹²⁰ In this way, Heller offers a convincing critique of Schmitt’s tendency to aestheticise the enemy and, in so doing, brings to our attention the problematic status of a concept of the political that is grounded autonomously. Taking freedom as a first order value means that freedom plays a central role in the formation of political community. This positive account of freedom thinks that ‘freedom’ denotes a field of stable meaning.

¹¹⁷ *Ibid.*, p. 342.

¹¹⁸ *Ibid.*, p. 343.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

There is little consideration of how the concept of freedom is prone to the same dynamics of exclusion that Heller condemns in Schmitt's account of the political. Freedom itself is not immune to existential as well as actual violence. Whilst it may be naïve to claim that my "freedom" is dependent upon another's "unfreedom" there is critical mileage in thinking about how freedom and the subject are constitutive practices of power. Heller aims for authenticity (taking freedom as the normative *sine qua non* of political community); Schmitt aims for autonomy (treating the decision as *the* spark of political reason). Both these accounts foreclose the political to other domains of thought, conduct and experience. Heller criticises Schmitt for reducing the political down to violence and struggle. Nonetheless, Heller's alternative account of the political is also guilty of reductionism.

On the theoretical plane, the concept of the political does not exclude anything or anyone, and it is thus that it avoids the pitfall of radical political philosophies. On the ethical plane, however, not 'anything' goes. What ought to result from the concretisation of freedom – if anything ought to result from it all – is equal freedom for all. The process of concretisation of freedom cannot (should not) thwart the fulfilment of this Ought, irrespective of whether or not one anticipates that this will happen.¹²¹

Reductionism is an inescapable component of Schmitt's and Heller's concept of the political. They have both opted for a concept of the political that is mediated through a particular field or domain. The consequence is that "whatever enters this field becomes political; whatever exits from it ceases to be political."¹²² For Heller, the determination of what is political is arrived at through public agreement. This is borne out her claim that "everything that satisfies some other criterion of the 'political' becomes actually political if men and women so decide that it should be discussed, contested, decided in the public domain."¹²³ For Schmitt, the determination of what is political occurs privately through the decisionist ethic of the sovereign. Schmitt's concept of the political is defined negatively: it is *not discussion*, it is *not contestation*, and it is *not decided in public*.

¹²¹ *Ibid.*, p. 342.

¹²² *Ibid.*, p. 341.

¹²³ *Ibid.*

Heller claims that radicalism is at the core of Schmitt's concept of the political. Her mission thus becomes to demonstrate how the political can be reconfigured along less exclusionary lines. Thinking of the political as the *practical realization of the universal value of freedom in the public domain* ostensibly hopes to achieve this objective. Yet both thinkers draw upon modernist visions in outlining their respective accounts of the political. Heller's concept selection rests upon modernist assumptions. The "practical" requirement stands for the instrumental use of knowledge and the understanding that political knowledge must progressively improve upon the past. The emphasis on "realization" reveals a transformatory political ethic, one which ensures the relevance of the conceptual domain. This means that the political must operate as a project in reality rather than as mere thought experiment. Talking about the "universal value of freedom" also depends upon the discovery of a transcendental norm that will supersede all other norms (including the norms of exclusion which are a feature of Schmittian political community). Appealing to the "public domain" reinforces the gendered division of political knowledge, non-public persons are thereby excluded from the domain of the political.

Heller attacks Schmitt for the radicalisation of the political, establishing an exclusionary domain that enables the state to determine friend from enemy. This account stresses the purity of political form and, in so doing, overestimates the degree to which Schmitt's concept of the political can be described autonomously. Schmitt's political theory might be elegant in its articulation of the binary logic of friend and enemy but it is hardly a succinct political theory. Rival conceptions of the political can be found in his work. The binary represents only one aspect of Schmitt's concept of the political. The political, as it is claimed throughout the current work, is also a discourse grounded in theology, ethics, law, and sovereignty. These discourses do not exist autonomously but operate through each other. This means that not only is the political the concretisation of the friend and enemy distinction but also a theological discourse detailing the origins and extent of sovereignty.

Heller also claims that Schmitt's concept of the political results in an understanding of politics as "direct action" and "mass action."¹²⁴ Yet for Schmitt the political is not always about action reduced to a physical realm. He who decides in the conditions of the dire emergency means that not everybody, least of all those people who are said to constitute the mass, is capable of the political. The political obtains its importance for Schmitt because not everybody has the capacity to act politically. Heller's account places too much emphasis on "the mass" dimension of modern politics, yet Schmitt himself is critical of modernity that unthinkingly extends the political to the masses. The mass operates at a distance from the political; the political community is produced through the political and never, contrary to Heller, the author of its own existence. Schmitt's concept of the political is not a theory for the mass but, on the contrary, a concept which is directed against the mass.

Taken together, Heller attempts to reconstruct the thoroughly modern concept of "the political" without the exclusionary dynamics that beset the Schmittian account of the political. Heller's substitute concept – the concretisation of freedom – does not sufficiently address the bounded nature of the political, particularly in relation to the definitional role of the normal and the exceptional in making the political. Heller credits Schmitt with thinking that the political only emerges through the exception; the political is the permanent state of war. Heller condemns Schmitt for thinking exceptionally about the political. Thinking exceptionally about the political, in her opinion, degrades the ethical possibilities that emerge through everyday life. Nonetheless, it is important not to treat the exception as an exclusively negative force within a political community. Heller thinks that the extremes of discourse rarely generates positive ethical outcomes. This account of the political places too much emphasis on the public sphere and does not specify what constitutes the "mere daily practices" that should be taken and judged in terms of "the political."¹²⁵ Additionally, this account of the political overlooks the

¹²⁴ *Ibid.*, p. 332.

¹²⁵ *Ibid.*, p. 336.

potential of the exception to reveal imbalances or contradictions within a given constitution. The exception can bring into view something which has, in fact, been previously occluded.

2.7 Using Schmitt critically: against the normalisation of politics

Both Habermas and Heller take issue with the exceptional ethic contained in Schmitt's rendering of the political. This exceptional ethic is neither conducive to 'ideal speech' (Habermas) nor does it assist in making freedom the concrete expression of politics (Heller). Whilst these claims on the capacity of theory to generate positive political outcomes attempt to think about the implicit violence in Schmitt's concept of the political they do not, on the other hand, sufficiently take into account the important claim that Schmitt is making about the normalisation of politics under liberalism. Both Heller and Habermas take the norm as the defining moment of the political. Mouffe, Hirst and Žižek use Schmitt to advance a more complex understanding of political rationality than that emerging from proceduralism.

Nonetheless, these are not just debates about the value of procedural reason *versus* non-procedural reason. This chapter has endeavoured to demonstrate how Schmitt's critique of liberal thought rests upon an attack on procedural conceptions of order in political life. These debates involve important question about the epistemic status of the political. In particular, when arguments are made about the epistemology of the political (positive/negative; procedural/substantive; juridical/post-juridical; normal/exceptional) that the domain of politics itself is dramatically altered. Concept selection is not just a question of naming something as 'political.' Saying that "this *is* political" or "that *is not* political" demonstrates the constitutive role that words playing in relation to politics; but these words are not linked to reality as such. Whether friend or enemy is concretised (Schmitt) or freedom becomes the concrete value of political community (Heller) is dependent upon the ability to exercise mastery in the conceptual world and, correspondingly, to attain mastery over the world itself. Both accounts of the political are

singularly constructed, resulting in the substantive content of politics being frozen in both time and space.

Autonomy is at the centre of Schmitt's *Concept of the Political*. What distinguishes the concept of the political from other concepts is taken to be the primary task of political theory. In Schmitt's autonomous account of the political, "without you I'm nothing" should read "without you I'm something." The following chapter introduces the autonomy claim and assesses the extent to which Schmitt's autonomous concept of the political could be described as being *truly* autonomous. Carl Schmitt *does not* provide an autonomous concept of the political for the sole reason that the friend-and-enemy grouping does not comprehensively reflect the workings of the political in Schmitt's own thought.

3

Carl Schmitt and the ‘autonomy’ of the political

3.1 Introducing autonomy

This chapter examines the sense in which Carl Schmitt’s concept of the political can be understood *autonomously*. Talking in terms of ‘autonomy’ represents a strategic manoeuvre by Schmitt to establish the autonomy of the domain of the political vis-à-vis other conceptual domains. There are a number of different understandings of autonomy that can be identified in Schmitt’s *The Concept of the Political*. These different usages of autonomy have both methodological and normative consequences for the way in which politics (as a type of conduct) and the political (as a domain) are constituted. Ultimately, Schmitt’s desire to establish the autonomous nature of the political, allowing the specifically political antithesis to achieve mastery over all other forms of discourse, is bound to fail. This is because the establishment of a truly autonomous concept of the political is not possible without drawing upon the modernist understanding of the state. Moreover, where Schmitt says ‘autonomy’ it becomes evident that he is, in fact, referring to the capacity of the political to colonise discourse and thereby deny other forms of thought and conduct sovereignty. Schmitt’s autonomous concept of the political is weakened by the fact that it is not possible to refer to the political friend-and-enemy grouping without filling in the wider contexts. The Schmittian concept of the political not only presupposes the universality of the friend-and-enemy grouping but also, disregarding the objective of autonomy, presumes the existence of conventional understandings of politics and the political which are constitutive of both liberal and non-liberal thought. Schmitt cannot think of the political as autonomous. This chapter identifies Schmitt’s normative project in relation to an autonomous concept of the political and, somewhat tragically, declares this project unrealistic even before it is started. This will serve as a foundation to examine the theological underpinnings of sovereignty and the political in Chapter 4.

3.2 Politics equals the state?

“The concept of the political presupposes the concept of the state” writes Carl Schmitt in the opening paragraph of *The Concept of the Political*.¹ Schmitt seeks to radically debunk the claim that “state = politics” in the course of putting forward the claim that the political must be understood autonomously. Schmitt is concerned with the *differentia specifica* of the political. The autonomy thesis is not just a question of method – finding the right method to understand the political – but also a question of the normative framing of the political. Schmitt is concerned with the awkwardness in defining the state: is it a machine, organism, person, society, community, beehive, institution or a procedural order? “These definitions and images,” Schmitt argues, “anticipate too much meaning, interpretation, illustration, and construction, and therefore cannot constitute any point of departure for a simple and elementary statement.”²

The autonomy thesis thus aims at the elucidation of the political through a “simple and elementary statement.”³ By referring back to the state to define the political – the political *is* the state – Schmitt thinks that the conceptual purity of the political is denied. What matters in defining the political are not the institutions, processes, images, or the implied metaphorical landscape but its ability to refer to a condition which allows for a rigid designation of inner truth. Schmitt seeks to avoid confusion about what “the political” looks like. Since the state can operate according to bureaucratic norms – established through rule based reason, embedded in proceduralism – it does not make sense to imbue all state forms with the label “political.” Definitions of the political in terms of the state are phrased negatively, reflecting the juridical dimension of power identified by Foucault as forms of power that say no. Schmitt himself argues that definitions of the political are negative: “The word [the political] is most frequently used negatively, in contrast to various other ideas, for example in such antitheses as politics and economy, politics and morality, politics and law.”⁴ But Schmitt sees value in defining concepts negatively as it

¹ Carl Schmitt, *The Concept of the Political*, p. 19.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*, p. 20.

omits from the field of understanding conceptual ambiguity. “By means of such a negative, often polemical confrontations,” he declares, “it is usually possible, depending upon the context and the concrete situation, to characterize something with clarity.”⁵

For this reason it is argued that Schmitt’s concept of the political is the embodiment of *conceptual Realpolitik*, a methodological approach which stresses the autonomy of concepts vis-à-vis other concepts. Emphasising the polemical orientation of concepts means that the concepts come to be thought of in terms of their capacity to exclude. For Schmitt, concepts are forged through the oppositional placement of concept against concept. Schmitt seeks to discredit the notion that “state = politics” by claiming that such a simple equation does not evaluate the political on its own terms but rather in terms of a specific historical and institutional formation. If we are to truly understand the political, Schmitt suggests, then we need to think in terms of the political as an autonomous conceptual realm, admitting no other concepts into its domain: “The equation state = politics becomes erroneous and deceptive at exactly the moment when state and society penetrate each other.”⁶ If the political cannot be clearly distinguished from the state and the state itself is indistinguishable from civil society then the conceptual specificity of the political is lost.

Thinking of concepts polemically represents an attack on the dominant premise of liberal political epistemology concerning the neutrality of both concepts and processes. Schmitt thinks that the polemical quality of concepts receives its ultimate expression in the concept of the political. Liberalism also likes to maintain a clear separation between domains but it does so with little understanding of the abrasive quality that one domain possesses in relation to another domain. Religion, culture, education, and the economy (amongst others) are neutrally positioned in relation to each other. The emplacement of concepts polemically means that political epistemology comes to be understood not as the way in which the political world is composed of shared meanings – interdisciplinary

⁵ *Ibid.*

⁶ *Ibid.*, p. 22.

and/or intersubjective – but the capacity to think of the political in terms of what is not shared. The principle of neutrality results in an understanding of politics in which political responsibility is abrogated; when the political is thought of in terms of the neutral state, which hesitates to judge discourse, then the decisionist quality of the political is forsaken. The neutral state is thus equated with the non-interventionist state in which *anything goes*.

The autonomy thesis is best summed up in Schmitt's claim that "[a] definition of the political can be obtained only by discovering and defining the specifically political categories. In contrast to the various relatively independent endeavours of human thought and action, particularly the moral, aesthetic, and economic, the political has its own criteria which express themselves in a characteristic way."⁷ Schmitt's friend and enemy distinction proceeds from this autonomy claim. This is because Schmitt thinks it necessary that the political contain "its own ultimate distinctions, to which all action with a specifically political meaning can be traced."⁸ This leads Schmitt to claim that "[t]he specific political distinction to which political actions and motives can be reduced is that between friend and enemy."⁹ Schmitt's concept of the political is reductive rather than constructive. It does not seek out similarities between the political and other domains of thought (society, economy, morality, ethics, and aesthetics) but seeks to reduce the political down to its elemental or essential form.¹⁰ This definition operates "in the sense of a criterion and not as an exhaustive definition or one indicative of substantial content."¹¹

In Schmitt's conceptual world, the political must speak for itself. "In any event," Schmitt declares, "it is independent, not in the sense of a distinct new domain, but that it can

⁷ *Ibid.*, p. 26.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ This requirement is a prime example of the mastery at work in Schmitt's concept of the political. The attempt to reduce the political down to its elemental or essential form is an attempt to assume dominance over the concept of the political itself, thereby keeping at bay rival accounts or renderings of the political.

¹¹ *Ibid.*

neither be based on any one antithesis or any combination of other antitheses, nor can it be traced to these.”¹² Schmitt’s language stresses the conceptual autonomy of the political vis-à-vis all other conceptual domains. In calling for a definition of the concept of the political which “can speak clearly for itself” Schmitt is thinking in exclusionary terms. When Schmitt elaborates his concept of the political he does so in a way that keeps at bay alternative renderings of politics and, in terms of the framework at stake, the political itself. This means that the political should not be confused with the polemical categorisations at work in other conceptual domains. According to Schmitt, it would be a category error to think of the political in terms of good and evil, profitable and unprofitable, the beautiful and the ugly, and so on. The friend and enemy distinction represents the best expression of the political according to Schmitt:

The distinction between friend and enemy denotes the utmost degree of intensity of a union or a separation, of an association or dissociation. It can exist theoretically and practically, without having to simultaneously to draw upon all those moral, aesthetic, or other distinctions. The political enemy need not be morally evil or aesthetically evil; *he* need not appear as an economic competitor, and it may be advantageous to engage with him in business transactions. But *he* is, nevertheless, the other, the stranger; and it is sufficient for *his* nature that *he* is, in a specifically intense way, existentially something different and alien, so that in the extreme case conflicts with *him* are possible.¹³

The political is thus embedded in a process of negation; what is being negated is not just other domains of thought measured against the autonomy of political (methodology) but the very basis by which one subject relates to another subject. Talking of the enemy in terms of “the Other” or “the stranger” highlights the way in Schmittian ethics operates as a negative ethic. This involves an exclusionary logic which says “*I am myself because I am not you, my enemy.*”

Schmitt moves from a discussion of the political in terms of its conceptual makeup (the ontology of the political) to a discussion of the political in terms of how it impacts on the

¹² *Ibid.*

¹³ *Ibid.*, pp. 26-27. Italics added.

rationality of the subject (the political psychology of the political). This is evident in the way in which he jumps, somewhat prematurely, from considering the political as an autonomously bound concept to talking in terms of how it manifests itself in the political subject. “Each participant,” Schmitt suddenly announces, “is in a position to judge whether the adversary intends to negate his opponents way of life and therefore must be repulsed or fought in order to preserve one’s own form of existence. Emotionally the enemy is treated as being evil and ugly, because every distinction, most of all the political, as the strongest and most intense of the distinctions and categorizations, draws upon other distinctions for support.”¹⁴ The transition from talking in terms of the ontology of the political (as a concept) to thinking of the political as a process of the mind by which individuals arrange conduct is not clearly spelt out by Schmitt. Schmitt gives the political an objective dimension whilst at the same time noting that the political involves an affective domain of both recognition (“you are my friend”) and revulsion (“you are my enemy”).

The autonomy thesis is further developed by Schmitt when he claims that “the inherently objective nature and autonomy of the political becomes evident by virtue of its being able to treat, distinguish, and comprehend the friend-enemy antithesis independently of other antitheses.”¹⁵ Jumping from the conceptual domain of the political, concerned with the ontology of politics, to the affective domain of political psychology does little in the way of advancing the overall autonomy thesis. If the friend-enemy antithesis depends upon emotionally treating the enemy as ‘evil’ and ‘ugly’ then the project of autonomy is diluted. What are we then to make of the friend and enemy distinction and Schmitt’s claim that this distinction is at the centre of an autonomous concept of the political? Schmitt warns against endowing the friend and enemy antithesis with metaphorical or symbolic meaning.¹⁶ According to Schmitt, “[t]he friend and enemy concepts are to be

¹⁴ *Ibid.*, p. 27.

¹⁵ *Ibid.*

¹⁶ I reject outright the suggestion that you can separate the metaphorical or symbolic conceptual order from a concrete conceptual order. All concepts are dependent upon a metaphorical or symbolic landscape. Schmitt’s desire to define the political autonomously – without reliance upon other distinctions – must necessarily involve the deployment of metaphor. In fact, Schmitt’s choice of antithesis for the definition of the concept of the political is highly metaphorical. Friends and enemies are not just concepts plucked from

understood in their concrete and existential sense, not as metaphors or symbols, not mixed or weakened by economic, moral, and other conceptions, least of all in a private-individualistic sense as a psychological expression of private emotions and tendencies. They are neither normative nor pure spiritual antitheses.”¹⁷

Schmitt’s desire to isolate the concept of the political from a normative domain rests upon a philosophy of concept formation that stresses commensurability above representation. Such a concept of the political involves the search for “universal commensuration in a final vocabulary.”¹⁸ It specifically rejects a hermeneutic understanding of the concept of the political in favour of one which stresses the commensurability of the word (in this case “the political”) to the object being described (“politics”). The autonomy thesis judges the value of the concept of the political according to its capacity to describe the phenomenon of politics in terms of a commensurable vocabulary. To ask that the political *speak for itself* is to frame the question of the political with the objective of commensurability in mind. It rests upon the “classic picture of man-as-essentially-knower-of-essences” rather than thinking of the political as an expression of the temporal and spatial relations of power that are contingently grounded.¹⁹

The concept of the political being advanced by Schmitt is thereby at odds with the metaphoric or symbolic conception of politics associated with the philosophical and artistic movement of romanticism. It asserts the impossibility of transferring what is specifically political to other domains (such as economics, morality, aesthetics) and vice versa. It also involves the rejection of instrumental rationality (individualism) and sentimentality (subjectivity) in the domain of the political. This is because thinking of the

an objective realm but refer to an intersubjective domain in which people possess pre-established knowledge about its normative operation. Schmitt’s friend and enemy distinction is pure metaphor; since friend and enemy denote the existential domain of the political.

¹⁷ *Ibid.*, p. 28.

¹⁸ Richard Rorty, *Philosophy and the Mirror of Nature*, (New Jersey: Princeton University Press, 1979), p. 368.

¹⁹ *Ibid.*, p. 364.

political in terms of sentiment and/or instrumental rationality transfers the concept of the political away from its primary antithesis of friend and enemy. Schmitt claims that the political antithesis of friend and enemy is independent of both normative and spiritual considerations. A primary objective of the current work is to argue that the friend and enemy antithesis operates as Schmitt's foreground condition of the political and that in adopting Schmitt we need to be alert to the fact that the background conditions reveal a concept of the political that involves mastery and dominion as well as friends and enemies. If Schmitt is so concerned to advance an autonomous concept of the political then why does he give the political a human face in the form of the friend and enemy distinction? Why not argue instead that the political concerns the phenomenology of violence aimed at the destruction of all that is Other? The fundamental problem is that Schmitt's friend and enemy antithesis lays its emphasis on the enemy. It does not outline the preconditions for friendship nor does it address the ethical obligations that friend has in relation to friend. Thus, the friend can be thought of as *not enemy*.

The consequence of an autonomous concept of the political is that the primary antithesis identified by Schmitt – the friend and enemy distinction – has no commensurability beyond the formal field of the political. “In the domain of economics,” Schmitt argues, “there are no enemies, only competitors, and in a thoroughly moral and ethical world perhaps only debating adversaries.”²⁰ Schmitt does not think that we do occupy a moral and ethical world and, for this reason, the concept of the political represents the most extreme (and thereby accurate) understanding of politics. Schmitt's political realism is strongly linked to his conceptual realism in which word (“the political”) embodies the essence of the concept (“politics”). This political realism is both methodological and normative. In the current work this is referred to as *conceptual Realpolitik*. The method stresses the autonomy of the political vis-à-vis other concepts: the concept of the political is the ultimate expression of the binary logic that constitutes the domain of thought and experience. The normative dimension is strongly linked to the methodological concern. The fact that Schmitt has no place for the normative in his concept of the political is in

²⁰ Carl Schmitt, *The Concept of the Political*, p. 28.

itself a normative position; casting aside norms in favour of a phantasmic notion of the concrete or the Real is not a position without normative loading. This means reading critically Schmitt's claim that "[t]he concern here is neither with abstractions nor with normative ideals, but with the inherent reality and the real possibility of such a distinction."²¹ For Schmitt, concept formation has little to do with one's relation or stance to the concept being formed; one can reject or accept the concept being formed ("the political") but only by endangering the very autonomy of that same concept. The friend and enemy antithesis operates independent of the moral or normative preferences of the inquiring subject. To paraphrase Schmitt, hoping that the friend and enemy antithesis will simply vanish from the world or cease to exist is to overlook the fact that the political assumes a concrete and autonomous form. The political must speak for itself; normative incursion only shifts the site of the political – the antithesis of friend and enemy – into a hidden domain.

Schmitt's unit of analysis shifts uneasily between the subject, the state, and the international level. The friend and enemy antithesis is processed subjectively by the individual; expressing the intense existential relationship that enemy has in relation to enemy. At the same time the friend and enemy antithesis also refers to the collective enemy properly identified through the state. Schmitt's friend and enemy antithesis is grounded in intersubjective experience, involving public recognition that the enemy exists and, as such, constitutes a threat to the stability of state form. Schmitt outlines the following criteria for enmity: "An enemy exists only when, at least potentially, one fighting collectivity of people confronts a similar collectivity. The enemy is solely the public enemy, because everything that has a relationship to such a collectivity of men, particularly to a whole nation, becomes public by virtue of such a relation."²² For Schmitt to be rejecting the equation that the "state = politics" whilst claiming that the enemy must necessarily be a public enemy, expressing the interests of a whole nation, is paradoxical. Schmitt's friend and enemy conceals the state, it does not take the state out of the conceptual domain signalled by the term "the political."

²¹ *Ibid.*

²² *Ibid.*

Schmitt's Christian realism also draws the distinction between the private enemy and the public enemy. Schmitt stresses the difference between thinking of the enemy as *hostis* and thinking of the enemy as *immicus*.²³ "Love your enemy" (Matthew 5:44; Luke 6:27) only applies to the private realm according to Schmitt. "The enemy in the political sense," Schmitt argues, "need not be hated personally, and in the private sphere only does it make sense to love one's enemy, i.e., one's adversary."²⁴ Schmitt's division of ethics into private and public realms only serves to undermine his critique of liberal political epistemology. Unknowingly, Schmitt endorses the rationality associated with liberal conceptions of political order, primarily in relation to the bourgeois division of the world into private and public space. *Hostis* refers to the enemy of the state, *immicus* involves a concept of enmity that exists between private persons. It is evident for Schmitt that Christian ethics can be circumvented when the enemy is deemed to be *hostis*. "Love your enemy" is thereby recast as "love your private enemy." Schmitt further twists Christian ethics in claiming that the bible itself, as doctrine, functions exclusively in terms of antithesis. In theology, the antithesis of "good" and "evil" is parallel to the antithesis of "friend" and "enemy" in the domain of the political. The consequence is that Schmitt thinks that the bible "touches the political antithesis even less than it intends to dissolve."²⁵ The consequence of this is that Christian ethics takes on a political form. The teaching of Augustine, where the subject is compelled to keep faith with the enemy, is recast in terms of Christian realism. "Love your enemy" thus "does not mean that one should love and support the enemies of one's own people."²⁶ *Hostis* allows for the suspension of Christian ethics, signalling the triumph of the exception over consolidated Christian ethics.

Schmitt's definition of the enemy in terms of *hostis* does little to advance his claim that the equation "state = politics" is erroneous. In fact, the state is an integral part of the

²³ *Ibid.*

²⁴ *Ibid.*, p. 29.

²⁵ *Ibid.*

²⁶ *Ibid.*

friend and enemy antithesis and thereby an essential component of Schmitt's concept of the political. Schmitt's concept of the political presupposes the existence of the state, as the institutional form by which the friend and enemy antithesis is articulated. Schmitt's requirement that the political be characterised by the extreme case is dependent upon the state being called into question by the enemy (whether concretely, potentially, or existentially). "The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the extreme point, that of the friend-enemy grouping. In its entirety the state as an organized political entity decides for itself the friend-enemy distinction."²⁷ Schmitt is guilty here of institutional fetishism. The state is endowed with the status of a deciding subject, without consideration of the ways in which the state constitutes itself as an "organized political entity." Schmitt's concept of the political talks in terms of "friend" and "enemy" but this vocabulary is forged through the state. Schmitt's autonomy thesis is thereby problematic, owing to the fact that for the "friend" and "enemy" antithesis to resonate politically the existence of the state is presupposed. Consequently, the claim "state = politics" edges itself into Schmitt's autonomous concept of the political.

For Schmitt, political concepts become "political" when they are endowed with polemical meaning. Language is political because it expresses a "concrete antagonism" which reinforces the fact that the friend and enemy antithesis is at the centre of *all* discourse. Liberalism has lost its capacity to think of the enemy as an essential component of the political, preferring to talk in terms of the adversary who does not threaten the foundations of order. The adversary can be managed through discourse, norms, and the establishment of the right constitutional framework. Schmitt's enemy is beyond management; the extreme case is at odds with procedural conceptions of law and politics. Political language is polemical language and, for this reason, the Habermasian discourse agenda does not qualify as political in Schmitt's worldview. Political language must always have as its referent a concrete understanding of the public enemy. According to Schmitt, political concepts are "focused on a specific conflict and are bound to a concrete

²⁷ *Ibid.*, pp. 29-30.

situation; the result (which manifests itself in war and revolution) is a friend-enemy grouping, and they turn into empty and ghostlike abstractions when this situation disappears.”²⁸ Political conflicts cease to be “political” if they no longer function in terms of a concrete antagonism; if the enemy assumes the face of the friend then their right to be called “political” is revoked. For Schmitt, liberalism prematurely translates a discourse of enmity into a discourse based on the ethics of friendship. In so doing, the enemy no longer occupies a central role in discourse; thereby endangering the very stability of the state.

Political language only makes sense because it refers concretely to a public enemy. Schmitt makes this known in his claim that political concepts – state, republic, society, class, sovereignty, constitutionalism, dictatorship – are intelligible only through antagonism. These concepts should be assessed as “political” only if they refer to a situation in which a concrete antagonism exists, whether actual or potential: “Words such as state, republic, society, class, as well as sovereignty, constitutional state, absolutism, dictatorship, economic planning, neutral or total state, and so on, are incomprehensible if one does not know exactly who is to be affected, combated, refuted or negated by such a term.”²⁹ Political language operates as part of a strategic game in which the enemy is existentially invalidated and/or physically repelled. This juridical conception of the political does not look to norms as a way of turning the energy of enmity into a discourse of friendship. This is because political language is risky language, referring to a condition in which enemy has the potential to destroy enemy. The Hobbesian conception of equality – where all are equal because all can kill each other equally – is thus an important element of Schmittian political ethics. This results in the following according to Schmitt:

Above all the polemical character determines the use of the word political regardless of whether the adversary is designated as nonpolitical (in the sense of harmless), or vice versa if one wants to disqualify or denounce

²⁸ *Ibid.*, p. 30.

²⁹ *Ibid.*, pp. 30-32.

him as political in order to portray oneself as nonpolitical (in the sense of purely scientific, purely moral, purely juristic, purely aesthetic, purely economic, or on the basis of purities) and thereby superior.³⁰

3.3 The political: meta or micro discourse?

The political thus traverses *all* discourse, mocking the ability of pure reason to provide the conditions for perpetual peace and stability. Pure conceptions of reason – science, morality, jurisprudence, aesthetics, economics – seek to contain the political by imposing their own pure order on the concrete antagonism between friend and enemy. For Schmitt, the only way to achieve order in the domain of the political is to give the friend and enemy antagonism free reign within discourse. Appealing to another conceptual realm – jurisprudence, economics, science, aesthetics, morality – only sublimates the political. Accordingly, “[t]he friend, enemy, and combat concepts receives their real meaning precisely because they refer to the real possibility of physical killing.”³¹ Taking danger out of the equation, instituting the right procedure, signals the end of politics.

The right procedure for the eradication of enmity from the political community does not exist according to Schmitt. Neutrality is itself a polemical position; in anticipating an alternative discourse that challenges the antagonistic conception of the political it positions itself as an anti-discourse. Neutrality requires the capacity of the state, as the vehicle of the decision in the dire emergency, to suspend the logic of the friend and enemy grouping. Schmitt presumes that the universal norm of political community is the friend and enemy grouping. This is the only norm which is ineradicable and does not contain an exception. “Should only neutrality prevail in the world,” Schmitt declares, “then not only war but also neutrality itself would come to an end. The politics of avoiding war terminates, as does all politics, whenever the possibility of fighting disappears. What always matters is the possibility of the extreme case taking place, the real war, and the decision whether this situation has or not arrived.”³² Schmitt stakes his autonomy thesis on the fact that the friend and enemy grouping represents the most

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*, p. 35.

extreme (and thereby purest) engagement with the world. Yet for this concept of the political to make sense requires a familiar stock of modernist images to be present, especially in relation to the state exercising a monopoly over the use of violence within its domain.

If Schmitt's autonomous concept of the political needs the state to determine the friend and enemy grouping, then there is also the assumption that war is the exceptional norm of political community: "That the extreme case appears to be an exception does not negate its decisive character but confirms it all the more. To the extent that wars today have decreased in number and frequency, they have proportionally increased in ferocity."³³ Schmitt does not present his exception in terms of a normative order. To do so would undermine the methodological objective of the autonomy thesis; namely, that the concept of the political exists on its own terms and is not reducible (let alone answerable) to reason based on universalistic ethics. Nonetheless, war does function as a normative order in Schmitt's concept of the political. It is an exceptional norm not a normal norm; but it does still draw its authority from the fact that its decisionist quality enjoys tacit consent within a political community.

It has been noted that Schmitt's autonomous concept of the political requires the state, endowed with the capacity to determine the rightful use of force and violence within the political community. The normative order established by this institutional formation of the political presupposes that war operates in terms of the exception. Schmitt's ability to talk of the political in terms of autonomy is thus steadily undermined by the fact that he requires the state to 'operationalise' the friend and enemy grouping. In terms of political ethics, this grouping receives its purest articulation in combat: "For only in real combat is revealed the most extreme consequence of the political grouping of friend and enemy. From this most extreme possibility human life derives its specifically political tension."³⁴ Talking in terms of the possibility of enmity means that Schmitt can dismiss forms of

³³ *Ibid.*

³⁴ *Ibid.*

normative order that are predicated upon less juridical conceptions of the subject and power. For Schmitt, the friend and enemy grouping need not manifest itself in all discourse but there is the possibility that this antithesis can come into view without warning. This involves Schmitt rejecting positive articulations of the political that are predicated upon the establishment of a pacific ethic in discourse:

A world in which the possibility of war is utterly eliminated, a completely pacified globe, would be a world without the distinction between friend and enemy and hence a world without politics. It is conceivable that such a world might contain many very interesting antitheses and contrasts, competitions and intrigues of every kind, but there would not be a meaningful antithesis whereby men could be required to sacrifice life, authorized to shed blood, and kill other human beings. For the definition of the political, it is here even irrelevant whether such a world without politics is desirable as an ideal situation. The phenomenon of the political can be understood only in the context of the ever present possibility of the friend-and-enemy grouping, regardless of the aspects which this possibility implies for morality, aesthetics, and economics.³⁵

Schmitt's autonomy thesis, stressing the *differentia specifica* of the political, positions itself in opposition to pacifism. For Schmitt, pacifism lacks the capacity to think in terms of the specifically political tension signalled by the friend and enemy grouping. And for pacifism to exist as a political movement, to eradicate war from the globe, requires the pacifist to think in terms of this same friend and enemy grouping. According to Schmitt, if "[t]he will to abolish war is so strong that it no longer shuns war, then it has become a political motive, i.e., it affirms, even if only an extreme possibility, war and even the reason for war."³⁶

Schmitt's autonomy thesis also advances a claim in relation to the supremacy of the political antithesis above all other antitheses. The political can thus be described as autonomous because it achieves 'mastery' over all other forms of discourse. The peculiar thing about the political is that it is answerable only unto itself and, when fully

³⁵ *Ibid.*

³⁶ *Ibid.*, p. 36.

operational, has the potential to subsume all discourse under its conceptual machinery. This leads Schmitt to claim that “[e]very religious, moral, economic, ethic, or other antithesis transforms itself into a political one if it is sufficiently strong to group human beings according to friend and enemy.”³⁷ The autonomy of the political involves Schmitt establishing the supremacy (or ‘mastery’) of the political above all other forms of discourse. This is despite the fact that Schmitt expresses the fact that each discourse generates its own specific antithesis which exists independent of other domains of thought and experience. It turns out that “autonomy” is tantamount to “mastery,” illuminating the political as the master of all other forms of discourse.

Should the political be understood *purely* in terms of the friend and enemy grouping? The autonomy thesis is directed towards an understanding of the political which isolates the essential element of the political in terms of its potential to generate the friend and enemy grouping in discourse. But the imagery of the political which is subsequently established by Schmitt is dependent upon a wider conceptual schema. Autonomy does not thereby refer to the ability to talk of the political in terms of what is specific to politics but the capacity of the friend and enemy grouping to colonise other forms of discourse. Schmitt claims, for instance, that “[t]he political does not reside in the battle itself, which possesses its own technical, psychological, and military laws, but in the mode of behaviour which is determined by this possibility, by clearly evaluating the concrete situation and thereby being able to distinguish the real friend and the real enemy.”³⁸ There is a disturbing reliance on the value of the *real* and the *concrete* with little acknowledgement by Schmitt that the epistemological foundation of his concept of the political stakes its core claim on *possibility* and *potentiality*. The friend and enemy grouping need not be an actual condition, faced by subjects in the here and now, but it is constituted through such a possibility. The autonomy of the political is its omnipresence, which when it does not exist is ascribed by Schmitt as a latent condition of being. Schmittian political epistemology thus contains the following warning: those who deny the friend and enemy grouping a placement in discourse do so at their own peril. This

³⁷ *Ibid.*, p. 37.

³⁸ *Ibid.*

warning stems from the fact that the political is also presented as the constitutive factor of human life; life without the political can be interesting but it is rarely meaningful. Its meaningfulness derives from the fact that it generates an existential moment in a culture which has elevated neutrality to a governing principle.

The current discussion seeks to identify how Schmitt's identification of the *differentia specifica* of the political is characterised by complexity. Schmitt's concept of the political is grounded in a juridical ethic of mastery and dominion; this involves the establishment of a sovereign entity through the state. In doing this, Schmitt does not refute the equation that "state = politics" but reinforces it by turning to the state as the decisionist structure that alone possesses the *jus ad bellum*. Schmitt also traverses a number of different levels in advancing the claim that the political should be assessed autonomously. Schmitt moves uneasily from the affective domain of individual subjectivity to the nation state to the international level without clearly identifying why we need to think of the friend and enemy grouping as the most critical possibility at all these different levels.

Schmitt's friend and enemy grouping is an imaginary which links into a modernist understanding of the political, reliant upon the state as the primary articulation of politics. Schmitt endows this articulation with existential power whilst denying at the same time that he is endorsing the friend and enemy grouping in political life. "The definition of the political suggested here," Schmitt argues, "neither favours war nor militarism, neither imperialism nor pacifism. Nor is it an attempt to idealize the victorious war or the successful revolution as a "social ideal," since neither war nor revolution is something social or something ideal."³⁹ Schmitt thinks himself above norms and his autonomy thesis allows him to identify the friend and enemy antithesis without having to accept responsibility for the normative landscape authored thereafter. This normative landscape is replete with authoritarian imagery in stressing the existential character of the pure political decision:

³⁹ *Ibid.*, p. 33.

The real friend-enemy grouping is existentially so strong and decisive that the non-political antithesis, at precisely the moment at which it becomes political, pushes aside and subordinates its hitherto purely religious, purely economic, purely cultural criteria and motives to the conditions and conclusions of the political situation at hand. In any event, that grouping is always political which orients itself toward this most extreme possibility. This grouping is therefore always the decisive human grouping, the political entity.⁴⁰

This imagery also emerges in Schmitt's claim that "[t]he political entity is by its very nature the decisive entity, regardless of the sources from which it derives its last psychic motives. It exists or does not exist. If it exists, it is the supreme, that is, in the decisive case, the authoritative entity."⁴¹ The emphasis that Schmitt places on the authoritative entity allows him to reject as 'superficial' the versions of legality that work through public law doctrine. Schmitt is concerned with the ways in which the social entity determines the extreme case and, in so doing, determines the friend-and-enemy grouping. In this respect, Schmitt's objective of outlining an autonomous concept of the political only makes sense if the institutional formation of the state is present. How is it possible to imagine the decisively important friend-and-enemy grouping without the institutional assistance of the state?

Schmitt is unable to answer this question owing to the fact that his autonomous concept of the political only resonates when accompanied by an authoritative entity. The state fulfils this task, despite the fact that Schmitt earlier rejected the collapsing of political form into state form. Schmitt's state is a nonetheless a specific type of state, placing itself at a critical distance from liberal conceptions of the state that operate pluralistically. The pluralist theory of the state is rejected on the basis that it lacks the capacity to decide. For Schmitt, authoritativeness is conceived in terms of dominion and mastery. This means that the site of the decision takes place at the core, which by its very nature must be beyond appeal from the peripheries. This leads him to criticise the pluralist theory of the

⁴⁰ *Ibid.*, p. 38.

⁴¹ *Ibid.*, p. 44.

state for lacking a centre: “The pluralist theory of the state is in itself pluralistic, that is, it has no center but draws its thoughts from rather different intellectual circles (religion, economics, liberalism, socialism etc.).”⁴²

Schmitt thinks that pluralism wrongly conceives the political in terms of overlapping, fragmentary groupings to the detriment of a truly autonomous account of the political. This results in the claim that authoritative entity ceases to matter in pluralistic accounts of the state. This is because each grouping counts as a value unto itself; there is little space for a higher value that determines the authoritative. Schmitt identifies Harold Laski’s pluralism with the rejection of the “sovereignty of the political entity.”⁴³ Thus, another way of thinking of autonomy is sovereignty. Pluralism, Schmitt declares, stresses the operation of the political entity through “individual lives in numerous different social entities and associations.”⁴⁴ What is lost in this understanding of the political is a collectivist understanding of life stressing the homogeneity of *true* political community. Pluralism talks of the citizen in terms of different experiences and categories of membership but lacks the ability to think of citizenship in terms of membership to the political community: “He [the citizen] is a member of a religious institution, nation, labor union, family, sports club, and many other associations.”⁴⁵ Pluralistic conceptions of citizenship disembodify the citizen from the political community. More worrying for Schmitt is the fact that these groupings are not part of an authoritative chain of command. These groupings cannot be characterised in terms of an authoritative: “These control him in differing degrees from case to case, and impose on him a cluster of obligations in such a way that no one of these associations can be said to be decisive and sovereign.”⁴⁶

For Schmitt, the problems associated with the pluralist theory of the state emerge most forcefully when the state must act militaristically. Schmitt claims that the political entity

⁴² *Ibid.*

⁴³ *Ibid.*, pp. 40-41.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

alone possesses the *jus belli* which is defined as “the real possibility of deciding in a concrete situation upon the enemy and the ability to fight him with the power emanating from the entity.”⁴⁷ Schmitt is insistent that the political takes concrete form, turning the concept of the political into knowledge endowed with practical reason. A concrete understanding of the political thus involves fighting, not as a metaphor or conceptual landscape but as the concrete realisation of the political through violence. Schmitt links the vitality of political community to its capacity to violently reconfigure the enemy as Other through a violent order. Mastery is evident in Schmitt’s requirement that a people “fight for its existence, independence and freedom.”⁴⁸ A people that lacks the ability or willingness to fight *deconstitutes* itself as a people, losing its capacity to talk of itself as a political community because it has failed to define itself in relation to the concrete enemy. This is expressed by Schmitt in his claim that:

It would be ludicrous to believe that a defenceless people has nothing but friends, and it would be a deranged calculation to suppose that the enemy could perhaps be touched by the absence of a resistance. No one thinks it possible that the world could, for example, be transformed into a condition of pure morality by the renunciation of every aesthetic or economic productivity. Even less can a people hope to bring about a purely moral or purely economic condition of humanity by evading every political decision. If a people no longer possesses the energy of the will to maintain itself in the sphere of politics, the latter will not thereby vanish from the world. Only a weak people will disappear.⁴⁹

Schmitt weakens his autonomy claim further by talking of the state as the “decisive political entity.”⁵⁰ This is because it alone possesses the power to dispose of human life: “The state as the decisive political entity possesses an enormous power: the possibility of waging war and thereby publicly disposing of the lives of men.”⁵¹ Killing thus becomes the concretisation of the concept of the political. It functions as a way of determining whether the enemy is a *real* enemy: “If there really are enemies in the existential sense as

⁴⁷ *Ibid.*, p. 46.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, p. 53.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

meant here, then it is justified, but only politically, to repel and fight them physically.”⁵² Linking killing to the political further undermines Schmitt’s autonomy claim. This is because the political functions militarily, contaminating the notion that the political exists as an independent domain. This militarist ethic is present in Schmitt’s riling against the concept of the just war. Wars should not be fought in terms of ethical or juristic norms but on the basis of the enemy alone. According to Schmitt, “[t]he justification of war does not reside in its being fought for ideals or norms of justice, but in its being fought against a real enemy.”⁵³ War thus forms part of the domain of the political; war is an expression of the extreme relations that are generated through the political. Talking of war as a normative order, in which there are ethical and juristic constraints on conduct, endangers the relationship that war has to the concept of the political. War gives the political a transcendental quality. “By virtue of this power over the physical life of men,” Schmitt declares, “the political community transcends all other associations or societies.”⁵⁴ For this reason, the political can be characterised as an expression of the concept of mastery introduced in the preceding chapter.

Thus, it has been established that Schmitt’s autonomous concept of the political depends upon the existence of the state. This state is endowed with the ability to determine the friend-and-enemy grouping and, in so doing, establish the conditions under which life can be forfeited in the name of a higher political objective. This friend-and-enemy grouping is an essential component of political community. Without a concept of enmity at the forefront of political life there would be no means by which the political community could define itself. Schmitt links this to the Hobbesian relationship of protection and obedience: “If a people is afraid of the trials and risks implied by existing in the sphere of politics, then another people will appear which will assume these trials by protecting it against foreign enemies and thereby taking over political rule. The protector then decides who the enemy is by virtue of the eternal relation of protection and obedience.”⁵⁵ Thus, not only is the political linked to the capacity of the authority entity to distinguish friend

⁵² *Ibid.*, p. 47.

⁵³ *Ibid.*, p. 49.

⁵⁴ *Ibid.*, p. 47.

⁵⁵ *Ibid.*, p. 52.

from enemy but, as a consequence of this decisionism, functions contractually in terms of the Hobbesian protection-obedience dialectic. Schmitt's autonomous concept of the political subsequently acquires an additional domain which is bound up in the logic of protection. Schmitt declares that "[n]o form of order, no reasonable legitimacy of legality can exist without protection and obedience."⁵⁶ The political thus becomes a term to describe the security regime established through the contractual relationship of protection and obedience: "The *protego ergo obligo* is the *cogito ergo sum* of the state."⁵⁷ And since the state concretely expresses the friend-and-enemy grouping it should be assumed that the political involves the contractual relationship of protection and obedience.

Schmitt's autonomous concept of the political stresses the inalienability of the friend-and-enemy grouping in public life. Schmitt claims that a private person is not capable of having political enemies since political enmity can emerge only through publicity.⁵⁸ Public persons have political enemies because the friend-and-enemy grouping is given concrete expression through the norms and conduct of political community. Giving the enemy an intersubjective presence involves norms of recognition that, as Mouffe notes, depend upon the we/they distinction. The autonomy claim becomes a way for Schmitt to keep the enemy in the domain of the political, refusing to allow its vitalistic energy to permeate the private domain.

3.4 What level of the political? What type of autonomy?

Foreclosing the private domain from the political domain also involves an ontological claim about the level at which the political exists (or does not exist). Each level expresses a different intensity of the friend-and-enemy grouping. The binary categorisation 'friend'

⁵⁶ *Ibid.*, p. 52.

⁵⁷ *Ibid.*

⁵⁸ Schmitt does not consider the implications of the friend-and-enemy grouping in making the distinction between public and private life. If the enemy cannot exist in the private realm then it is also not possible that friendship can exist at the private sphere. This is because Schmitt's concept of the friend-and-enemy grouping works in terms of binary logic; without the friend defined in relation to the enemy (and vice versa) then there is no possibility of talking of a discourse on friendship. If Schmitt's claim that there is no such thing as a private enemy were taken seriously then it would also mean that there is no such thing as a private friend.

and 'enemy' come into being at different levels of experience, with the ultimate of these occurring at the interstate level. Schmitt establishes a cascading hierarchy of political ontology, expressing the utmost intensity of the friend-and-enemy antithesis at the interstate level. For this reason, Schmitt rules out any potential of truly cosmopolitan law at the international level: "As long as a state exists," declares Schmitt, "there will always be in the world more than just one state. A world state which embraces the entire globe and all of humanity cannot exist. The political world is a pluriverse, not a universe."⁵⁹

Schmitt's discussion on cosmopolitanism provides yet another way of looking at the autonomy thesis; that is to say, autonomy can be taken to mean that the friend-and-enemy grouping enjoys an autonomous power over all other conceptions of political order, especially at the international level. Admitting the possibility of an ethical order at the international level is construed by Schmitt as equivalent to the denial of the political itself. Since the political entity has been conceived in terms of the friend-and-enemy grouping it means that politics becomes the expression of this antithesis rather than its transcendence. "The political entity," Schmitt declares, "cannot by its very nature be universal in the sense of embracing all of humanity and the entire world. If the different states, religions, classes, and other human groupings on earth should be so unified that a conflict among them is impossible and even inconceivable and if civil war should forever be foreclosed in a realm which embraces the globe, then the distinction of friend and enemy would also cease."⁶⁰ For this reason it is reasonable to assess Schmitt's concept of the political as anarchical, especially at the international level.

Anarchy operates as an exceptional norm of the political at the international level. At this level of political reality there can be no cosmopolitan solution to this problem of anarchy. This is because Schmitt associates the language of universalism with instrumental forms of rationality:

⁵⁹ *Ibid.*, p. 53.

⁶⁰ *Ibid.*, p. 53

The concept of humanity is an especially useful ideological instrument of imperialist expansion, and in its ethical-humanitarian form it is a specific vehicle of economic imperialism. Here one is reminded of a somewhat modified expression of Proudhon's: whoever invokes humanity wants to cheat. To confiscate the word humanity, to invoke and monopolize such a term probably has certain incalculable effects, such as denying the enemy the quality of being human and declaring him to be an outlaw of humanity; and a war can thereby be driven to the most extreme inhumanity.⁶¹

Schmitt does not think it possible for the friend-and-enemy grouping to be overcome at the international level. Kantian cosmopolitanism is unable to reconfigure the ontological status of the political; enemies cannot be turned into friends through an ethical sleight of hand. The Kantian solution, as diffused through Habermas, stresses the universality of political community. This political community works in such a way that the "violation of rights in *one* part of the world is felt *everywhere*."⁶² Such an understanding of political community can only work if universality is taken as a constitutive reality. But Schmitt is unwilling to grant universality an easy reception in political discourse. This is because universality itself is subject to the workings of the friend-and-enemy grouping. According to Schmitt, "[u]niversality at any price would necessarily have to mean total depoliticization and with it, particularly, the nonexistence of states."⁶³ Universality cannot function as an autonomous value of the political because of the fact that there is no means by which it can escape the higher, autonomous logic of the friend-and-enemy grouping. Schmitt believes that the possibility of world-embracing unity, especially in relation to the development of international law, is a matter concerning the "anthropological profession of faith."⁶⁴ Related to this question of anthropological starting points is Schmitt's broader claim that political thought should be assessed in terms of its pronouncements concerning human nature. "One could test all theories of state and political ideas," Schmitt announces, "according to their anthropology and

⁶¹ *Ibid.*, p. 55.

⁶² Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory*, (Cambridge, MA: MIT Press, 1998), p. 176.

⁶³ Carl Schmitt, *The Concept of the Political*, p. 55.

⁶⁴ *Ibid.*, p. 58.

thereby classify these as to whether they consciously or unconsciously presuppose man to be by nature evil or by nature evil.”⁶⁵

Assessing the value of political ideas in terms of anthropological starting points, as Schmitt does, further undermines the strength of the autonomy thesis. The political is not only assessed in terms of its relationship to an authoritative system of state power, possessing decisionist power in relation to *jus belli* but also, more fundamentally, concerned with the moral status of persons: “The problematic or unproblematic conception of man is decisive for the presupposition of every further political consideration, the answer to the question whether man is a dangerous being or not, a risky or a harmless creature.”⁶⁶ The autonomy claim is further undermined in Schmitt’s discussion of the anthropological distinction between ‘good’ and ‘evil’ where he talks of the political in metaphorical terms. Animal fables are representational of political reality, especially in relation to the early modern thought of Hobbes, Spinoza, and Pufendorf:

Striking in this context is the political significance of animal fables. Almost all can be applied to a real political situation: the problem of aggression in the fable of the wolf and the lamb; the question of guilt for the plague in La Fontaine’s fable, a guilt which of course falls upon the donkey; justice between states in the fables of animal assemblies; disarmament in Churchill’s election speech of October 1928, which depicts how every animal believes that its teeth, claws, horns are only instruments for maintaining peace; the large fish which devour the small ones, etc.⁶⁷

The direct applicability of a metaphorical landscape to a concrete political landscape is something that Schmitt initially condemns in an earlier section of *The Concept of the Political*. If the political is to be assessed autonomously – judged according to its own conceptual categories – then it does not require elaborate illustration or further elucidation. Paradoxically also, Schmitt’s discussion of *Leviathan* also enforces the

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

normative authority of the political through the power of metaphor.⁶⁸ This is despite the fact that Schmitt is concerned with the development of a concept of the political that rests upon its own precepts and does not anticipate further meaning, illustration, or interpretation from other domains. Thus, Schmitt's autonomy thesis should be thought of in terms of its capacity to stand above other domains rather than a methodological claim concerning the separateness of the political vis-à-vis other domains. Autonomy thus involves turning the political into a sovereign entity: the political is constituted in terms of sovereignty. This sovereignty is exercised in relation to other domains. The political is sovereign (and thereby achieves mastery) over religion, culture, aesthetics, economics, and morality. Its autonomy stems from the fact that it is able to transform all other antitheses into the concrete friend-and-enemy grouping. In terms of the juridical ethic of mastery and dominion, the most important theme in the current work, the friend-and-enemy grouping is the coloniser, never the colonised.

3.5 Autonomy of the political vs. sovereignty of the political

Taking the autonomy of the political as a claim about the sovereignty of the political rather than a methodological claim about the separateness of concepts involves a shift in focus away from the *concept* of the political towards the politics of *mastery and dominion*. Schmitt is less concerned with the embodiment of the political as a thing ('politics') or how the political is related to the domain of words ('the political') than with the strategic positioning of the friend-and-enemy as a metadiscourse.⁶⁹ Schmitt's concept of the political itself works in terms of the logic of the friend-and-enemy

⁶⁸ See Chapter 5 for a fuller discussion of the political significance of metaphor in Schmitt's *The Leviathan in the State Theory of Thomas Hobbes*.

⁶⁹ Foucault offers a useful way of looking at the Schmittian formation of the concept of the political when talking about the formation of concepts. Foucault links the formation of concepts to what he describes as a *field of presence*. This *field of presence* involves a way of looking at the concept of the political in terms of how the statement 'the political' is formulated and used within discourse. Foucault seeks to examine how concepts are formed by taking into account a "*field of presence* (by which is understood all statements formulated elsewhere and taken up in a discourse, acknowledged to be truthful, involving exact description, well-founded reasoning, or necessary presupposition); we must also give our attention to those that are criticized, discussed, and judged, as well as those that are rejected or excluded); in this field of presence, the relations established may be of the order of experimental verification, logical validation, mere repetition, acceptance justified by tradition and authority, commentary, a search for hidden meanings, the analysis of error." Michel Foucault, *The Archaeology of Knowledge*, (London: Tavistock, 1974), p. 57.

discourse. This is because in putting forward the claim that the political is autonomous – the sovereign master of all other discourse – Schmitt establishes liberalism as the enemy of the political. Schmitt is consequently less concerned to represent the truth of the political (“this is politics”) and more concerned with advancing a comparative claim about the validity of one account of the political vis-à-vis other representations. Liberalism *misrepresents* the political and Schmitt seeks to demonstrate why liberal political ontology denies the polemical basis of the political.

In Schmitt’s view, liberalism prejudices the human subject by giving values – rights, equality, and freedom – a universal foundation within political community. Liberalism thinks in terms of the universal with little acknowledgement that universals can be constituted through extreme particulars. This is evident in the liberal conception of humanity which is described by Schmitt as an “all-embracing, social ideal, a system of relations between individuals.”⁷⁰ This liberal vision is depicted by Schmitt as utopian, owing to the fact that the establishment of universal norms regulated through an ideal would depend on the total depoliticisation of discourse. Liberalism also misjudges the human subject in the extent to which rationality can operate constitutively. This stems from Schmitt’s claim that political thought must be assessed according to whether it presupposes man (sic) to be *by nature* evil or *by nature* evil.⁷¹ The autonomy of the concept of the political, establishing the sovereignty of the friend-and-enemy grouping within discourse, invalidates the liberal rendering of politics and the political.

This liberal rendering of politics and the political presupposes, in Schmitt’s estimation, man to be *by nature* good.⁷² This is a consequence of the fact that liberalism invests too much faith in neutrality as an adjudicatory tool. Rival truth claims can be accommodated through the liberal neutrality model. In so doing, liberalism overlooks the polemical basis of both thought and conduct. At the same time Schmitt claims that liberalism represents

⁷⁰ Carl Schmitt, *The Concept of the Political*, p. 55.

⁷¹ *Ibid.*, p. 58.

⁷² *Ibid.*, p. 60.

an attack on a specific type of political order and, as such, seeks to banish this order from discourse. “[I]t remains self-evident,” Schmitt suggests, “that liberalism’s negation of state and the political, its neutralizations, depoliticizations, and declarations of freedom have likewise a certain political meaning, and in a concrete situation these are polemically directed against a specific state and its political power.”⁷³ Schmitt argues that there is no such thing as *liberal political theory* because its positive understanding of human nature is not sufficiently radicalized to culminate in the existential friend-and-enemy grouping: liberalism does not construct, liberalism does not deconstruct, liberalism does not destruct.⁷⁴

Schmitt establishes the concept of the political negatively. This is evident in his claim that “all genuine political theories presuppose man to be evil.”⁷⁵ The human subject should be deemed to be a “dangerous and dynamic being.”⁷⁶ No amount of rationality, procedure or neutrality can overcome this basic anthropological fact according to Schmitt. Political thought is produced through a problematic assessment of human nature; if humankind were not *dangerous* and *dynamic* then there would be no need to talk in terms of the political. Liberal thought subordinates political reason (the friend-and-enemy grouping) to other forms of reason. These forms of reason are pluralistically conceived, lacking a central principle by which social and political order can be attained. “This means,” Schmitt argues, “that society determines its own order and that state and government are subordinate and must be distrustingly controlled and bound to precise limits.”⁷⁷ Characterising liberal thought as depoliticised thought involves a claim in relation to mastery. Concepts are judged according to the implicit power hierarchies that

⁷³ *Ibid.*, p. 61.

⁷⁴ See in particular Schmitt’s claim that “[a]lthough liberalism had not radically denied the state, it has, on the other hand, neither advanced a positive theory of state nor on its own discovered how to reform the state, but has attempted only to tie the political to the ethical and to subjugate it to economics. It has produced a doctrine of the separation and balance of powers, i.e., a system of checks and controls of state and government. This cannot be characterized as either a theory of state or a basic political principle.” *Ibid.*, p. 61.

⁷⁵ Speaking in terms of the political being ‘genuine’ reveals how Schmitt’s thinking on the political functions in terms of essentialism. It also represents an attack on liberal political thought which misrepresents the ontological condition of the political according to Schmitt. *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*, p. 60.

they institute. Schmitt's cascading logic stresses the sovereignty of the political domain above all other conceptual domains.⁷⁸

For Schmitt, liberalism talks in terms of 'society' and 'culture' when what actually shapes these amorphous concepts is the political, involving a conception of the friend-and-enemy grouping. Hegel is depicted by Schmitt as a thinker for whom the enemy assumes a central role in the political. "Hegel," Schmitt declares, "has also advanced a definition of the enemy which in general has been evaded by modern philosophers. The enemy is a negated otherness."⁷⁹ Hegel is celebrated for developing the "first polemically political definition of the bourgeois."⁸⁰ This is owing to the fact that the Hegelian dialectic stresses the decisiveness of concrete thinking.⁸¹ Schmitt argues that Hegelian philosophy is "an expression of the recognition that from every domain the point of the political is reached and with it a qualitative new intensity of human groupings."⁸² Hegel does not repress the political. He allows full conceptual sovereignty (or *autonomy*) of the political. Despite the fact that Hegel is identified with liberal thought Schmitt associates Hegel with the transformation of all other domains into the political. The economic domain is not an autonomous sphere, kept in check through neutrality. According to Schmitt, Hegel allows for the "hitherto nonpolitical or pure matter of fact" to be transformed into the political: "When it reaches a certain quantity, economic property, for example, becomes obviously social (or more correctly, political) power, *propriété* turns into *pouvoir*, and what is at first only an economically motivated class antagonism turns into a class struggle of hostile groups."⁸³ The Hegelian dialectic stresses the constitutive power of antagonism, undermining the neutrality principle and making a mockery of the

⁷⁸ That Schmitt privileges the political domain above all other domains is not surprising. Nonetheless, what is telling about Schmitt's hierarchical ordering of domains is the fact that this is mapped onto the divide between public and private. Whilst the political enjoys conceptual sovereignty over all other concepts it is clear that Schmitt accords priority to domains that function in terms of publicity (the state, government etc.). Society is dismissed by Schmitt as too amorphous a concept. The individual and private domain is the least valued domain for Schmitt.

⁷⁹ *Ibid.*, p. 63.

⁸⁰ *Ibid.*, p. 62.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

image of the subject found in liberalism. Schmitt depicts this liberal subject as the *riskless subject*:

The bourgeois is an individual who does not want to leave the apolitical riskless private sphere. He rests in the possession of his private property, and under the justification of his possessive individualism he acts as an individual against the totality. He is a man who finds his compensation for his political nullity in the fruits of freedom and enrichment and above all in the total security of its use. Consequently he wants to be spared bravery and exempted from the danger of a violent death.⁸⁴

The political subject, on the other hand, is both a risky and deciding subject. The liberal thinks that the subject can be constituted privately and without antagonism. The establishment of a normative order – rights and freedom embedded in a constitution – gives the liberal subject a conceptual distance from the decisive friend-and-enemy grouping. This distancing represents a retreat from the political. For both Schmitt and Hegel the enemy is a *negated otherness*. The consequence of this claim is that the enemy brings definitional clarity to the subject, since to be a *negated other* presupposes the existence of a person doing the *negating*. Liberalism cannot escape the enemy because it gives purpose to the subject. Schmitt stresses the relational dimension of the subject (the subject exists vis-à-vis other subjects) rather than the atomistic conception of the subject that emerges in liberalism (where the subject unilaterally determines the world). Affirming a notion of the enemy as *negated otherness* is not just a claim about the need for one's enemies to be negated; it is also a claim about the mutuality of the friend-and-enemy grouping. A perverse kind of solidarity emerges in Schmitt's account of the enemy. "[T]his negation is mutual," he declares, "and this mutuality of negations has its own concrete existence, as a relation between enemies; this relation of two nothingnesses on both sides bears the danger of war."⁸⁵

⁸⁴ *Ibid.*, pp. 62-63.

⁸⁵ *Ibid.*, p. 63.

The ‘dangerous ontology’ of the Schmittian subject can be attributed to the negative anthropology that Schmitt sees as necessary for understanding all domains of human thought. As if to anticipate Foucault’s critique of juridical conceptions of power, Schmitt argues that there can be no such thing as a positive political theory. The sphere of the political should be thought of in terms of enmity, meaning that “political conceptions and ideas cannot very well start with anthropological optimism.”⁸⁶ To do so would be to “dissolve the possibility of enmity and, thereby, every specific political consequence.”⁸⁷ Political theory, just like theology, must acknowledge the ‘radical evilness’ of the subject. Both must presuppose that the existence of “a good world among good people” is inherently idealistic. But political theory, unlike theology, does not get bogged down in moral and ethical distinctions. Hobbes is a truly *political* thinker according to Schmitt because the constitutive foundation of his political theory is pessimism. Hobbes “recognized correctly that the conviction of each side that it possesses the truth, the good, and the just bring about the worst enmities, finally the war of all against all.”⁸⁸

A consequence of thinking in terms of enmity means that a pessimistic anthropology becomes for Schmitt a “fundamental presupposition” of political philosophy.⁸⁹ Articulations of the political that are to the contrary, investing faith in the capacity of reason alone to establish order, are dismissed as being non-political. The concrete possibility of the enemy gives political philosophy its political character. Machiavelli and Hobbes are worthy of the label ‘political philosopher’ because “their realism can frighten men in need of security.”⁹⁰ Expressing the political autonomously means acknowledging that the ontology of the human subject is bound up in the concrete possibility of the enemy. The liberal subject is one who “prefers the illusion of an undisturbed calm and does not endure pessimists.”⁹¹ This results in the liberal subject establishing a rival sphere, contra to the political, as a means of escaping the antagonism that is inherent in a

⁸⁶ *Ibid.*, p. 64.

⁸⁷ *Ibid.*, p. 64.

⁸⁸ The fundamental problem with Schmitt’s reading of Hobbes is that he overlooks the proto-liberal elements contained therein. See Chapter 5 for a fuller elucidation of this problem.

⁸⁹ *Ibid.*, p. 65.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

political conception of the subject and thereby the world at large: “The political adversaries of a clear political theory will, therefore, easily refute political phenomena and truths in the name of some autonomous discipline as amoral, uneconomical, unscientific and above all declare this—and this is politically relevant—a devilry worth of being combated.”⁹²

The autonomy thesis returns in a new form, as a strategic claim about the structuring of the conceptual space implied by the designator ‘politics’ and ‘the political.’ Liberal thought has dislodged the autonomy of the political from the centre of discourse, substituting its own autonomous concepts where the friend-and-enemy grouping once stood. Schmitt ‘territorialises’ the political, turning the focus away from the substance of politics to a discussion about the right of a particular discourse to colonise discourse more generally. Debates about the autonomy of the political become, in essence, contestations about the conceptual sovereignty of one domain vis-à-vis all other domains. Autonomy thereby concerns the type of conceptual purchase that one concept has in relation to a wider conceptual field. Schmitt thinks it important that concepts be measured in relation to their particular domains. But not all domains are created equal:

The worst confusion arises when concepts such as justice and freedom are used to legitimize one’s own political ambitions and to disqualify or demoralize the enemy. In the shadow of an embracing political decision and in the security of a stable political state organization, law, whether private or public, has its own relatively independent domain. As with every domain of human endeavor and thought, it can be utilized to support or refute other domains. But it is necessary to pay attention to the political meaning of such utilizations of law and morality, and above all of the word rule or sovereignty of law.⁹³

Schmitt seeks to remind jurists that jurisprudence alone does not transcend the friend-and-enemy grouping. Acknowledging the separateness of law (or theology, morality, aesthetics, economics etc.) does not mean that a particular domain is exempt from the

⁹² *Ibid.*, p. 65-66.

⁹³ *Ibid.*, p. 66.

domain of the political. Citing Hobbes, Schmitt declares the “the sovereignty of law means only the sovereignty of men who draw up and administer this law.”⁹⁴ It does not mean that law enjoys sovereignty – a kind of conceptual sovereignty – above all other domains. The *rule of law* is not a claim about the need for law to regulate all other domains but, instead, the “legitimization of a specific *status quo*.”⁹⁵ Making a claim about the *rule of law* in liberal jurisprudence involves a claim about the autonomy of law vis-à-vis other domains. Schmitt prefers to think of the *rule of law*, and rules more generally, as the strategic articulations of power: “There always are concrete human groupings which fight other concrete human groupings in the name of justice, humanity, order, or peace.”⁹⁶ Jurisprudence involves the strategic positioning of all these concepts in the name of a higher, sovereign rule. The *rule of law* is the expression of such rules. Liberal conceptions of law, with the emphasis on normative order through constitutionalism, may reproach the political domain for thinking in terms of the friend-and-enemy grouping but, nonetheless, their normative order is itself a “political weapon used in actual combat.”⁹⁷

Schmitt invests the concept of the political with both theoretical and practical value: “Political thought and political instinct prove themselves theoretically and practically in the ability to distinguish friend and enemy.”⁹⁸ This value stems from the fact that when Schmitt talks of the political the focus is on the extreme ends of discourse. Normal regimes of politics, subject to the tyranny of routine, do not reveal the true value of the political. This value can only emerge when routine is sacrificed to the instinctual energy of the friend-and-enemy grouping, a motive force of the political. For this reason Schmitt declares that “[t]he high points of politics are simultaneously the moments in which the

⁹⁴ *Ibid.*, p. 67.

⁹⁵ *Ibid.*, p. 66.

⁹⁶ *Ibid.*, p. 67.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

enemy is, in concrete clarity, recognized as the enemy.”⁹⁹ A people that fails to engage in ‘high’ politics only prepares itself for failure and defeat.¹⁰⁰

Establishing a divide between high politics and low politics enables Schmitt to depict liberal political epistemology as the disavowal of high politics. The liberal imagination expresses itself through *culture*, resulting in a situation where a “relativistic bourgeoisie in a confused Europe searched all sorts of exotic cultures for the purpose of making them an object of its aesthetic consumption.”¹⁰¹ Romanticism and liberalism are bound up together in the same cultural movement. This movement regards culture as an autonomous domain, answerable only unto itself. The liberal emphasis on culture is inherently unsustainable according to Schmitt; its *telos* may direct itself towards neutralisation and depoliticisation but in order to do so it must invoke a political conception of discourse. Liberals do engage in politics, Schmitt suggests, but this is a reduced form of politics. Liberal politics is oriented towards the complete denial of the political rather than honestly responding to the friend-and-enemy grouping in discourse. Liberal politics is thus best expressed as a “liberal critique of politics.”¹⁰² This liberal critique of politics takes on an institutional form in the liberal hostility towards the state:

The systematic theory of liberalism concerns almost solely the internal struggle against the power of the state. For the purposes of protecting individual freedom and private property, liberalism provides a series of methods for hindering and controlling the state’s and government’s power. It makes of the state a compromise and of its institutions a ventilating system and, moreover, balances monarchy against democracy and vice versa.¹⁰³

⁹⁹ *Ibid.*

¹⁰⁰ See where Schmitt argues that “everywhere in political history, in foreign as well as domestic politics, the incapacity or the unwillingness to make this distinction [between friend-and-enemy] is a symptom of the political end.” *Ibid.*, p. 68.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*, p. 70.

¹⁰³ *Ibid.*

Establishing a ‘ventilating system’ between the different antagonisms that exist within political community represents an insufficient (and inefficient) way of dealing with the political. It also dilutes the capacity of a political community to exercise control, or mastery and dominion, in relation to life and death. One of the consequences of Schmittian high politics is that “the political entity must demand the sacrifice of life.”¹⁰⁴ But liberalism’s unencumbered concept of political community, conceived in terms of individuals rather than collectivities, means that the state loses its capacity to demand the life of the individual subject: “No consistent individualism can entrust to someone other than to the individual himself the right to dispose of the physical life of the individual. An individualism in which anyone other than the free individual himself were to decide upon the substance and dimension of his freedom would be only an empty phrase.”¹⁰⁵ Thus, Schmitt’s autonomous concept of the political also involves a claim about the corporatisation of individual wills through political community. Liberalism lacks this corporatist understanding of the political; subjectivity is solely conceived in terms of the individual will. This results in a reduced understanding of the legitimate conduct of state and government: “What this liberalism still admits of state, government, and politics is confined to securing the conditions for liberty and eliminating infringements on freedom.”¹⁰⁶

For Schmitt, liberalism is both “demilitarized” and “depoliticized.”¹⁰⁷ Liberals themselves may look positively at the eradication of the friend-and-enemy grouping from discourse but Schmitt thinks that it leaves political community open to collapse. Liberal thought focuses instead on the need to balance ethics and economics leading Schmitt to claim that “[f]rom this polarity they attempt to annihilate the political as a domain of conquering power and repression.”¹⁰⁸ The autonomy of the political, construed as the friend-and-enemy grouping, is thus set aside in favour of both ethics and economics. “The concept of private law,” Schmitt notes, “serves as a lever and the notion of private

¹⁰⁴ *Ibid.*, p. 71.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

property forms the center of the globe, whose poles—ethics and economics—are only the contrasting emissions from this central point.”¹⁰⁹ Political language is transformed in the process. Concrete political language—“you are my friend, you are the enemy”—is depoliticised, overwritten by euphemism: “Thus the political concept of battle in liberal thought becomes competition in the domain of economics and discussion in the intellectual realm. Instead of a clear distinction between the two different states, that of war and that of peace, there appears the dynamic of perpetual competition and perpetual discussion.”¹¹⁰

Liberalism thus transforms an objective condition of the political (i.e., the friend-and-enemy grouping) into endless discussion between competitors, all of whom share a basic concern for constitutionally agreed rules. Dissension from these rules would violate the pluralistic order and would automatically invalidate any wider political claim. Schmitt thinks it more appropriate that liberal political epistemology be conceived in terms of a series of dissolutions than a critical methodology for the balancing of interests within political community. The primary dissolution concerns the very autonomy of the political, triggering off a number of secondary dissolutions that affect both the concept and conduct of the political. “These dissolutions,” Schmitt documents, “aim with great precision at subjugating state and politics, partially into an individualistic domain of private law and morality, partially into economic notions. In doing so they deprive state and politics of their specific meaning.”¹¹¹ What is being dissolved, and gives Schmitt cause for complaint, is the autonomy of the political:

Outside of the political, liberalism not only recognizes with self-evident logic the autonomy of different human realms but drives them toward specialization and even toward complete isolation. That art is a daughter of freedom, that aesthetic value judgment is absolutely autonomous, that artistic genius is sovereign—all this is axiomatic of liberalism.¹¹²

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*, pp. 71-72.

¹¹¹ *Ibid.*, p. 72.

¹¹² *Ibid.*

3.6 The political as *essentially contested concept*

A primary claim in relation to the current chapter concerns the problematic validity of Schmitt's autonomy thesis. Schmitt, in fact, does not decisively demonstrate why the political is autonomous vis-à-vis other domains. What Schmitt does conclusively demonstrate, on the contrary, is the intrinsic competitiveness of the concept of the political. The territorialisation of conceptual domains, endowing one domain with sovereignty above all other domains, is the process by which the political is constituted. William Connolly uses the term "essentially contested concept" to refer to a situation in which disagreement over a concept is not the consequence of interpreting the same evidence differently but a dispute about the value inherent in the concept itself:

When groups range themselves around essentially contested concepts, politics is the mode in which the content is normally expressed. Politics involves the clash that emerges when appraisive concepts are shared widely but imperfectly, when mutual understanding and interpretation is possible but in a partial and limited way, when reasoned argument and coercive pressure commingle precariously in the endless process of defining and resolving issues. The conceptual debates among political scientists, then, are so often intense because we tacitly understand the relation of these debates to our deepest commitments and we sense as well that the import that the outcome of such contests has for the politics of our society.¹¹³

Schmitt's expression of the political as an autonomous domain should accordingly be regarded as a strategy in conceptual contestation. Schmitt's strategy is to colonise all other domains with the political, claiming that all other forms of discourse are *potentially* political and thereby remain open to the risky engagement of the friend-and-enemy grouping. Schmitt does this but without being critical of the way in which the colonisation of all other domains by one domain (the political) is not an objective condition but, in fact, a strategic manoeuvre of discourse. Schmitt's lack of reflexivity is unjustifiable, especially because he earlier decries universal value claims (freedom, rights, justice etc.) as little more than strategy. Schmitt confiscates the word political and

¹¹³ William E. Connolly, *The Terms of Political Discourse*, (Oxford: Blackwell, 1993), p. 40.

gives it a specific meaning that is all the more authoritative because it functions autonomously in terms of the high politics of the friend-and-enemy grouping.

Schmitt's *autonomous* concept of the political establishes an epistemological divide between order (concrete order) and norms (normative order). "In the concrete reality of the political," Schmitt notes, "no abstract orders or norms but always real human groupings and associations rule over the other human groupings and associations."¹¹⁴ Depicting liberalism as an abstract order, regulated through norms, allows Schmitt to sustain the claim that the political always takes on concrete form: "Politically, the rule of morality, law, and economics always assumes a concrete political meaning."¹¹⁵ If a specific domain takes political form then it does so *concretely*. The friend-and-enemy grouping is the primary domain of the political (and thereby autonomous vis-à-vis other domains) because it can rupture the low level antitheses of a particular domain through the concrete order established through the political. Schmitt thinks that liberalism is too embedded in procedural reason that it overlooks the substantive reason formed *in situ* when the friend-and-enemy grouping comes into being.

The liberal emphasis on procedural reason, regulated principally through norms, symbolises the triumph of normative order above concrete order. For Schmitt, liberalism disavows the political in seeking to establish order through normative and constitutional frameworks. If Schmittian political ethics are taken seriously then this normative order represents, in fact, no such order at all. This is because it has dispossessed itself of the functions associated with the *deciding subject*, one who takes the friend-and-enemy grouping as a primary determination of the substantive content of politics. Liberal political thought thinks it capable to institute order through the power of norms. Schmitt, on the other hand, thinks that norms only acquire force within discourse if strategically underwritten by the logic of the friend-and-enemy grouping.

¹¹⁴ Carl Schmitt, *The Concept of the Political*, pp. 72-73.

¹¹⁵ *Ibid.*, p. 73.

Whereas liberalism thinks in terms of Enlightenment historiography, with perfectibility at its core, Schmitt emphasizes the ways in which the political grouping of friend-and-enemy resists perfectionism. Liberalism is perfectionist, according to Schmitt, because its reliance on normative order endorses the “clear and simple upward line of human progress.”¹¹⁶ An associated criticism made by Schmitt is that liberalism presumes that its normative landscape has significance beyond the procedural. Upon this basis, liberalism seeks to turn its ontological claims about politics into wider claims with metaphysical and historical significance.¹¹⁷ Liberalism thereby becomes a constitutive worldview, overlooking the fact that liberalism develops as an oppositional movement against another worldview. The universalisation of liberal ideas – in history, art, politics, morality, ethics etc – is not concomitant with the oppositional foundations of liberal political epistemology. Liberalism needs this opposition to function. This is in spite of the fact that it seeks to regulate conduct through consensus. Liberalism itself, as a discourse on the political, is the product of human groupings and conduct working through *dissensus* rather than *consensus*. Nineteenth century liberalism emerged through the primary political grouping of the friend-and-enemy and, as Schmitt suggests, the attempt to keep at bay this political grouping through normative order is bound to fail. The human subject is not perfectible. And for this reason the institutions that are established by the human subject (and subsequently constitute the human subject) cannot claim any universal right in relation to order writ large.¹¹⁸

¹¹⁶ *Ibid.*

¹¹⁷ See where Schmitt argues that “[t]he word repression is utilized in liberal theory as a reproach against state and politics. This would have been nothing more than a powerless curse word of political debate if it had not been integrated into a large metaphysical and historical system. It gained thereby a broader horizon and a stronger moral conviction.” *Ibid.*

¹¹⁸ Schmitt notes that the nineteenth century establishes new forms of antagonism that now confront liberal subjects as anonymous forces beyond their control. There are overtone of Marx’s account of reification in Schmitt’s discussion of technology: “The extraordinary intricate coalition of economy, freedom, ethics, and parliamentarism has long ago finished off its old enemy: the residues of the absolute state and a feudal aristocracy; and with the disappearance of the enemy it has lost its original meaning. Now new groupings and coalitions appear. Economy is no longer *eo ipso* freedom; technology does not serve comforts only, but just as much the production of dangerous weapons and instruments. Progress no longer produces *eo ipso* the humanitarian and moral perfection which was considered progress in the eighteenth century.” *Ibid.*, p. 76.

Related to the liberal disavowal of the political is the establishment of a false antithesis between state and society. Liberalism has rejected the state in its normatively privileging of society.¹¹⁹ Schmitt notes in relation to Franz Oppenheimer that his “liberalism is so radical that he no longer permits the state to be even an armed office guard.”¹²⁰ The distinction between state and society involves a normative claim about the coercive capacity of the state vis-à-vis an emancipated concept of personhood that emerges through society. Schmitt does not accept the fracturing of associational life into those activities that belong to the state *versus* those activities that belong to the social domain. This fractured concept of associational life can be summed up in the notion that “[t]he concept of the state should be determined by political means, the concept of society (in essence nonpolitical) by economic means.”¹²¹ Schmitt sees this division expressed in nineteenth century German thought:

The economic way is declared to be reciprocity of production and consumption, therefore mutuality, equality, justice, and freedom, and finally nothing less than the spiritual union of fellowship, brotherliness, and justice. The political way appears on the other hand as a conquering power outside the domain of economics, namely, thievery, conquest, and crimes of all sorts. A hierarchical value system of the relation of state and society is maintained. But whereas Hegel’s systematized conception of the German state in the nineteenth century considered it to be a realm of morality and objective reason high above the appetite domain of egoistic society, the value judgement is now turned around. Society, as a sphere of peaceful justice now stands infinitely higher than the state, which is degraded to a region of brutal immorality. The roles are changed, the apotheosis remains.¹²²

Schmitt’s hierarchical value system, establishing the autonomy of the political vis-à-vis other domains, does not think of the state in terms of an ethical ideal. The Schmittian state is conceived in terms of a concrete entity. The state is not a normative abstraction,

¹¹⁹ It is important to note that Schmitt relates the disavowal of the political to the liberal rejection of the state. Consequently, the earlier claim that the need for an autonomous concept of the political was to challenge the equation that “state = politics” is not sustainable. Schmitt is linking the prospects for the political with the acknowledgement that the state constitutes the authoritative domain of the political.

¹²⁰ *Ibid.*, p. 76.

¹²¹ *Ibid.*

¹²² *Ibid.*, p. 77

configurable at the will of the liberal subject. Nor is the state the exclusive site of negativity. Schmitt thinks it wrong to think of the state as the expression of “filthy, evil, rapacious, and criminal politics” whereas society, on the other hand, speaks to “the good, the just, and the peaceful.”¹²³ The hierarchical value system established through Schmitt’s autonomous concept of the political rejects both the Hegelian ethic of state and the limited liberal state. The state is neither a universalistic ethical project (Hegel) nor is it the degraded political entity represented in liberal thought.

Schmitt evaluates the state in terms of the moment of decision, the moment at which the friend-and-enemy grouping is given concrete expression through the state. Thinking of the state as a regulatory device (liberal proceduralism) or as an extension of *laissez faire* economics (liberal economism) involves a denial of the Schmittian autonomy of the political. Allowing a nonpolitical domain – economics, morality, aesthetics, law – to colonise the space of the political represents a category error in Schmitt’s view. Transferring the logic of a nonpolitical domain to a political domain is to neglect the political responsibility of the *deciding subject*: “A domination of men based upon pure economics must appear a terrible deception if, by remaining nonpolitical, it thereby evades political responsibility and visibility.”¹²⁴ Neglecting the autonomy of the political, allowing another domain sovereignty over both the individual and collective subject, is also to neglect the mutual relation of protection and obedience identified by Hobbes. For this reason, economic considerations cannot be used as a means of overpowering the adversary in political life. If the contractual arrangements established through the market are deployed for political means then their effectiveness is questionable: “Exchange by no means precludes the possibility that one of the contractors experiences a disadvantage and that a system of mutual contracts finally deteriorates into a system of the worst exploitation and repression. When the exploited and the repressed attempt to defend themselves in such a situation, they cannot do so by economic means.”¹²⁵ A security

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

regime needs politics, specifically a concept of the political that works autonomously, as a means of defending the political community from both external and internal threat.

Liberalism fails to distinguish between the normative expression of order and the concrete realisation of order. If it made this distinction pronounced then its image of a peaceful society based on free exchange and contractual relations would be unsustainable. The liberal account of contract is not sufficiently able to transform the friend-and-enemy grouping, the life-force of the political, into more benign forms of human conduct. “Unfortunately, also” Schmitt declares, “usurers and extortioners appeal to the inviolability of contracts and to the sentence *pacta sunt servanda*.”¹²⁶ Schmitt’s autonomy thesis thus involves the territorialisation of discourse into particular domains, with each domain respecting its internal limits by not trespassing on the sovereign domain of the political. Economics must keep within its own sphere: “The domain of exchange has its narrow limits and its specific categories, and not all things possess an exchange value. No matter how large the financial bribe may be, there is no money equivalent for political freedom and political independence.”¹²⁷

Taking Schmitt’s argument about the separateness of domains seriously does not mean that all domains are to be deemed of equal value or worth within discourse. Schmitt’s argument about the autonomy of the political should be read as the sovereignty of the political by other means. The use of the words ‘autonomous,’ ‘autonomy’ and ‘autonomously’ are merely another way of expressing the sovereignty of the political vis-à-vis other conceptual domains. This sovereignty is evidenced in the ineradicability of the concept of the political within Schmittian discourse:

State and politics cannot be exterminated. The world will not become depoliticized with the aid of definitions and constructions, all of which circle the polarity of ethics and economics. Economic antagonisms can become political, and the fact that an economic power position could arise

¹²⁶ *Ibid.*, p. 78.

¹²⁷ *Ibid.*

proves that the point of the political may be reached from the economic as well as from any other domain.¹²⁸

For Schmitt, the human subject will continue to experience the political as destiny. But one of the central imports of the autonomy thesis is that *all* discourse – whether theological, aesthetic, moral and/or economic – has the potential to erupt into a higher domain signalled by the term ‘political.’ That economics can become politics, with the friend-and-enemy grouping at work, does not signal the mastery of economics against all other domains but, on the contrary, the radical plasticity that the friend-and-enemy grouping assumes within discourse. The political wins in the discourse game because it has successfully been able to transform avowedly ‘nonpolitical’ and ‘antipolitical’ systems of thought into the friend-and-enemy grouping. For Schmitt, there is no such thing as discourse without political meaning; each specific domain, replete with its own antagonisms, is at the end of the day susceptible to the inescapable ‘logic’ of the political. Yet it is important to consider how this logic is embedded in contextuality rather than universal precepts about what constitutes the political. A prime example of this contextuality is the division in Schmitt’s work between modernity (the world of the state) and pre-modernity (the world of theology, revealed through the miracle). The following chapter examines the tension between modernity and pre-modernity through Schmitt’s account of political theology. This political theology provides the key to understanding *how* and *why* Schmitt fails in his mission to develop an autonomous concept of the political.

¹²⁸ *Ibid.*

4

***Realpolitik* into *Theopolitik*: Carl Schmitt's political theology of the exception**

It was observed in the previous chapter that Schmitt's desire to provide an autonomous concept of the political affirmed the sovereignty of the political vis-à-vis other domains. The autonomy of the political referred to the capacity of the political to transform all other discourses into the specifically political antithesis contained within the friend-and-enemy grouping. Schmitt works initially from a critical perspective that declares liberalism, ironically, the enemy of the political. This chapter considers the philosophical foundations of Schmitt's anti-liberal concept of the political through a comparative assessment of *Political Romanticism* and *Political Theology*. The key claim advanced in the current discussion is that Schmitt's antiliberalism is not borne out of *Realpolitik* but, in fact, the consequence of a political theology of the exception. Talking in terms of *Theopolitik* underscores the centrality of theology to Schmitt's political worldview, further debunking the Schmittian claim that the concept of the political must be understood *autonomously*.

4.1 Liberalism, romanticism, and the political

Schmitt regards romanticism worthy of extended treatise because the romantic subject has unleashed a radical subjectivism that, in partnership with liberalism, has endangered the capacity of the political to operate in terms of the friend-and-enemy grouping. The ontological starting point of liberalism is the individual subject who, sharing the working assumptions of romanticism, cannot think of an objective world beyond subjectivist experience. Liberalism and romanticism are bound up in the same movement against the political in *Political Romanticism*. The expressive world (how the subject expresses herself in terms of the particular experience) has overtaken the objective world (how the subject expresses herself in terms of universal facts) as an ontological determinant. The subjectivist thread within liberalism is the product of the romantic subject who, in

yearning for the aesthetic above the political, has forgotten what it means to confront the extremes of life.

Schmitt's linkage of the romantic subject to liberalism has important implications for the conceptual domain that is signalled by the term "the political." For this reason, it is important to consider the sense in which Schmitt defines romanticism and its romantic subject. Schmitt provides several definitions of romanticism. The romantic can be defined in terms of an anthropological starting point; that is, the romantic is one who thinks that human beings are, by nature, inherently good.¹ The romantic can be described in terms of the romantic gaze. This gaze affects the capacity of the subject to think politically; for, according to Schmittian logic, the authenticity of the political is bound up in its capacity to organise conduct in terms of a negative ethic of the subject. Without this negative orientation there can be, put simply, no politics.

The romantic gaze is the very antithesis of the political subject. This is because what is offered is a statement of the world, especially its tensions, purely in terms of the subject. According to Schmitt, "[t]he romantic wants to do nothing except experience and paraphrase his experience in an emotionally impressive fashion. This is why, in his case, arguments and influences become the reverberating figures of his emotional states of affirmation and denial, emotional states that – after they have experienced the liberating and occasional stimulus of an object in the external world – revolve around themselves in "lofty circles.""² The romantic is characteristic of liberalism and its inability to provide a structured understanding of discourse, most notably political discourse. The romantic gaze manifests itself in the relativising movement of liberal culture. Culture is esteemed more highly than politics, betraying the implicit superiority of the domain of the political above other all other conceptual domains. "Suppose we imagine someone walking along the streets of a city or strolling through a market," Schmitt surmises, "watching the peasant women marketing their goods and the housewives doing their shopping, deeply moved by the endeavours of these people in offering one another fine fruits and good

¹ Carl Schmitt, *Political Romanticism*, (Boston: MIT Press, 2001), p. 1.

² *Ibid.*, p. 101.

food, enchanted by the charming children and attentive mothers, the lively youths, the upstanding men, and the venerable old folks. Such a person would be a romantic.”³

This definition of romanticism does not sufficiently capture the importance that Schmitt attaches to the romantic subject under liberalism. Schmitt identifies what the romantic subject *looks like*, in terms of a characterological assessment of romanticism, but this definition does not strategically position the romantic subject in terms of liberal ideology. Schmitt looks upon the romantic subject as an entirely self-referential project. The romantic defines “everything in terms of himself” whilst at the same time avoiding “every definition of himself in terms of something else.”⁴ The romantic subject is unable to establish an authentic relationship with the world owing to this radical subjectivism. This critique of subjectivism is present in the contemporary work of Charles Taylor who criticises the ethic of authenticity that dominates liberalism: “There is a certain way of being human that is *my* way. I am called upon to live my life in this way, and not in imitation of anyone else’s.”⁵ Schmitt thinks that this type of subjectivism – where the individual expresses the world exclusively through their own experience – is corrosive not just of morality but endangers the very notion of the political itself. Schmitt thinks of the romantic subject as the embodiment of voluntarism. Thus, the self-referential quality of the romantic means that the external world is treated as the plaything of the individual imagination. There is little, if any, commensurability between *my* reading of the world and *your* reading of the world.

Schmitt’s romantic subject is the enemy of institutional politics. Where institutions had previously been looked upon in terms of their concrete reality, the romantic subject now looks upon these as mere façades. The romantic subject regards the external, objective world as a series of “deceptive disguises, as a veil, a façade, a fake, or a decoration.”⁶ Schmitt’s romantic subject thus operates in terms of a post-modern ethic, unwilling to ground discourse in a framework of meaning that acknowledges the concreteness of the

³ *Ibid.*, p. 2.

⁴ *Ibid.*, p. 7.

⁵ Charles Taylor, *The Ethics of Authenticity*, (Cambridge, MA: Harvard University Press, 1999), pp. 28-29.

⁶ Carl Schmitt, *Political Romanticism*, p. 14.

political. For this reason, the romantic subject is unable to come to terms with the politically decisive grouping of friend-and-enemy. Ontologically speaking, the romantic subject is at a disadvantage in not being able to grasp the ‘real movement of reality.’ For Schmitt, the ‘real movement of reality’ is determined through the omnipresence of the friend-and-enemy grouping. The romantic subject, on the other hand, is more concerned with the practices, cultures, and histories of distant people in distant times than with the decisively political question.⁷ “If it [the romantic] does not succeed in finding its own form,” Schmitt notes, “then it grasps for thousands of surrogates in the genuine forms of other times, and other peoples, only to immediately repudiate the surrogate as a sham.”⁸ Romanticism thereby functions in terms of a stunted rationality. Each intellectual era, Schmitt suggests, contains within itself the form of its own representation. Romanticism, as a metaphysical and moral system, is “no longer capable of representation.”⁹

The fact that romanticism is unable to generate its own tools of representation reveals an epistemological flaw at the heart of its metaphysical system. Schmitt expresses this in his claim that romanticism has equated intellectual productivity with aesthetic production. “A universal art is demanded, and everything that is intellectual, religion, the Church, the nation, and the state, flows into the stream that has its source in the new center, the aesthetic.”¹⁰ The transposition of the aesthetic, as a discrete conceptual category, into a moral universe endangers the autonomy of the political. By deploying aesthetic norms as an adjudicatory tool the romantic subject dilutes the “hierarchy of the intellectual sphere.”¹¹ This hierarchy is a vital component of Schmitt’s autonomous concept of the political. Romanticism transforms conceptual categories in human thought – good and evil, friend and enemy – into opportunities for mere artistic self-expression. These conceptual categories are consequently dispossessed of their dialectical potential and become, in effect, works of art.¹² The political is understood *aesthetically*, *morally*,

⁷ *Ibid.*, p. 14.

⁸ *Ibid.*, p. 14.

⁹ *Ibid.*, p. 15.

¹⁰ *Ibid.*, p. 15.

¹¹ *Ibid.*, p. 16.

¹² *Ibid.*, p. 16.

economically, and/or *theologically* but is unable to be understood in terms of the specifically political distinction of friend and enemy.

Schmitt is critical of the aestheticisation of the political, reinforcing the methodological importance of conceptual purity and autonomy within Schmitt's legal and political theory. To make sense of concepts we must describe these in terms of their own internal dialectic, bringing to the surface the inherent antagonism that defines each conceptual domain. "Don't confuse the political with the aesthetic!" or "Good and evil belong to the domain of morality not the political!" thus become classic Schmittian injunctions. Romanticism pays little heed to the purity of conceptual worlds. Aesthetic production establishes itself as *the* autonomous domain; the aesthetic is a value that achieves mastery and dominion over all other values. This means that good and evil, profit and loss, friend and enemy, are meaningless to the romantic unless rendered into aesthetic form. "The general process of aestheticizing," Schmitt declares, "serves only to privatize through the medium of the aesthetic the other domains of intellectual life as well."¹³ The privatisation of values is at odds with the Schmittian concept of the political, where publicity becomes a precondition for both political knowledge and conduct.

For Schmitt, the problem with the aesthetic encroaching on all other domains is that adjudication and decision become increasingly impossible. Reformulating the political through the aesthetic endangers the possibility of concrete order thinking in relation to politics and the political. The romantic subject is depicted by Schmitt as one who can only understand (or attempt to understand) the world through the normative order of the aesthetic. This normative order is reflected in the romantic idea of *occasio*. Schmitt views *occasio* as a "disintegrative concept" because it challenges the concrete, hierarchical ordering of knowledge.¹⁴ Knowledge thus becomes a decentred concept, afloat rather than embedded in conditions that are intersubjectively grounded. Working through *occasio* establishes a distance between the romantic subject (the world inhabited by the romantic self) and the world itself. For Schmitt, romanticism involves *occasio* because it

¹³ *Ibid.*, p. 16.

¹⁴ *Ibid.*, pp. 16-17.

is more concerned with a roaming ethic (jumping from opportunity to opportunity) than a universal ethic that can preserve the overall structure of order. *Occasio* privileges accidental, spontaneous order above all other conceptions of order. The Schmittian imperative of concrete order thinking, giving the friend-and-enemy grouping concrete form, is consequently abandoned in favour of more amorphous conceptions of the political.

Occasionalism also challenges theocentric accounts of authoritative reason in human thought. Since romanticism “treats the world as an occasion” and, as such, is unwilling to grant a higher authority a role in decision-making this means theology has little role to play in the occasionalist imagination. In fact, Schmitt partially attributes the process of secularisation to the occasionalism of the romantic subject. Romantic subjects have not done away with the metaphysical but they have turned the metaphysical into something that can be attained through aesthetic production. Schmitt thereby claims that “mundane factors” have taken the place of God in human thought to the extent that the experience of modernity becomes one of “complete spiritual emptiness.”¹⁵ Romanticism does not necessarily embody a post-metaphysical ethic but, in fact, signifies the tragedy of metaphysics in a world where objective reality is expressed solely in terms of the self. The substitution of God with the “mundane” and “worldly factors” means that “the Church is replaced by the theatre, the religious is treated as material for a drama or an opera, and the house of God is treated as a museum.”¹⁶ For Schmitt, the ascendancy of the artist, as the practitioner of the aesthetic, heralds the triumph of the secular over the sacred. The romantic subject, as depicted by Schmitt, feels more at home in shaping the universe through artistic expression rather than concrete political action.

Occasionalism also undermines the capacity of political subjects to achieve a unitary, homogenous voice within the polity. Occasionalism, in jumping from moment to moment, gives subjects the freedom to process the world in their own terms. Frameworks of meaning are thus always personalised, subjective frameworks of meaning.

¹⁵ *Ibid.*, p. 18.

¹⁶ *Ibid.*, p. 18.

Metaphysics is no longer able to function in terms of an objective absolute. Without a permanent, concrete reality the romantic subject can only express itself through subjective forms of reasoning which, in Schmitt's view, does not constitute political reason at all.

"In this world," Schmitt recalls, "the romantic can make everything into a vehicle of his romantic interest; he can have the illusion, which here as well may be harmless or perfidious, that the world is only an occasion."¹⁷ For the romantic subject, the world is created anew. For Schmitt, concrete existence matters foremost above romantic existence. Describing the romantic subject as "his own master builder in the cathedral of his own personality," Schmitt cannot fathom the transformation of the metaphysical away from an objective absolute into a subjective, occasional setting.¹⁸ The romantic subject may inhabit a colourful world, Schmitt suggests, but this world is without a metaphysical absolute. There exists no authoritative entity apart from the individual subject itself. This situation gives rise to a profound metaphysical despair.

Schmitt links the fate of the romantic subject to the philosophical predicament that underpins the Cartesian ethic. The Cartesian ethic – *cogito ergo sum* – underestimates the degree to which external conditions constitutes the self. Schmitt attacks the romantic subject for elevating the ego above all other domains. In wanting "a new religion, a new gospel, a new creativity, and a new universal art" the romantic subject must depose previous modes.¹⁹ Reinventing the world from this egocentric standpoint is a futile venture according to Schmitt. This is because modern philosophy, given its Cartesian pedigree, is unable to reconcile the schism between thought and being, subject and object.²⁰ Not even Kantian constructivism, with its transcendental ambitions, can overcome the loss of the external world from modern philosophy.²¹ This is owing to the

¹⁷ *Ibid.*, p. 19.

¹⁸ *Ibid.*, p. 20.

¹⁹ *Ibid.*, p. 36.

²⁰ *Ibid.*, p. 52.

²¹ *Ibid.*, p. 52.

fact that, according to Schmitt, the Kantian solution does not think in terms of the objectivity of thought but thinks “that thought moves in objectively valid forms.”²²

Schmitt laments the purging of the transcendental God and its substitution with the occasionalist ethic of romanticism. For Schmitt, this transformation involves the loss of the “ultimate point of Legitimation in historical reality.”²³ Schmitt does not think that this transformation signals the capacity of human reason to determine its own path (in the Kantian sense of *man’s* release from *his* self-incurred tutelage). Schmitt argues that this transformation is the product of a “frightful human egoism” and results in a “mad will to power.”²⁴ This transformation involves the loss of a truly authoritative voice, capable of adjudication, within a given political community. If human conduct is to be judged according to the unrestrained will to power, then adjudication itself becomes impossible.

True religion must be above the state; it must have authority beyond and above the state.²⁵ Schmitt reprimands Hegel for dethroning the God of traditional metaphysics. The rationalisation of the people into the state means that the “*Volkgeist* functions only as an instrument of the logical operation of the *Weltgeist*, or world spirit.”²⁶ Hegel signals the death of traditional metaphysics because the apotheosis of the state means that *Volkgeist* is equivalent to the *Weltgeist*. Within this world spirit Schmitt sees two distinct traditions emerging; conservative and revolutionary. The revolutionary appeals to humanity in striving to make its vision of *Volkgeist* concordant with *Weltgeist*; the conservative looks to history as the means of recuperating *Weltgeist*. Both traditions appeal to time and duration as the ultimate justification for conceptions of right. The revolutionary thinks of time in terms of future utility value; the conservative thinks of time as a historically-conditioned knowledge that must be preserved in the interests of order. Neither tradition, Schmitt suggests, allows for conceptions of right to be determined by the God of traditional metaphysics. Authority is justified on the basis of future order and past order; not in terms of the present order.

²² *Ibid.*, p. 52.

²³ *Ibid.*, pp. 58-59.

²⁴ *Ibid.*, p. 59.

²⁵ *Ibid.*, p. 61.

²⁶ *Ibid.*, p. 64.

Schmitt thinks that romanticism emerges on the back of the revolutionary spirit but gradually embraces the conservative worldview. Romanticism, Schmitt notes, begins as a generational politics in which the young are called to challenge the ideas of the older generation.²⁷ “It introduces new ideals and thereby creates a place for its accomplishments, as a result of which the following generation again regards it as belonging to what it is old.”²⁸ But because the romantic spirit lacks a concrete grounding in traditional metaphysics, the romantic subject is doomed to find that its construction of order is invariably superseded by alternative ones. “What the medieval mystic had found in God,” Schmitt argues, “the romantic subject attempted to take upon itself, but without giving up the possibility of assigning in the two new demiurges, humanity and history, the problem of such a unification.”²⁹ The failure of the romantic subject to appeal to a metaphysical realm external to individual experience means that life itself becomes rootless. This has important ramifications for decision-making within a given political community: *how, after all, can the polity achieve unified, resolute decisions if its core foundation is the individual will to power?*

Schmitt’s discussion of the epistemic foundations of the romantic spirit is noteworthy; if only because it reinforces Schmitt’s attack on the metaphysical structure of liberalism. This can be evidenced in the image of the child within romantic thought: “What is touching about a child is that it is not yet determined, not yet limited.”³⁰ The romantic subject appeals to the innocence of experience before the fall; the child signals what has been lost under the mechanistic impulse of modernity. The romantic subject, in wanting to establish a temporal foundation for order, draws upon the image of the child as a motif of the new world not yet realised. “Primitive naiveté is the happiest state” for the romantic subject because it is “the illusion not yet destroyed, the eternal promise of

²⁷ *Ibid.*, p. 66.

²⁸ *Ibid.*, p. 66.

²⁹ *Ibid.*, p. 67.

³⁰ *Ibid.*, p. 69.

power.”³¹ The child, in short, symbolises the unbounded possibilities of life without the rational limitations that beset modernity.

The romantic attack on rationality, especially in relation to the boundaries of the political, can also be observed in the role that the exotic plays within romantic parlance. By seeking out the exotic, the romantic subject is able to avoid the difficult existential and material decisions within the boundaries of the existing political community. “It [the exotic] is a trump card that is played against the commonplace, actual reality of the present, and it is intended to negate the present. The remote, the unusual, the fantastical, the protean, the marvellous, the mysterious that some people even incorporate into a definition of the romantic, have no intrinsic importance. Their romantic function is the negation of the here and now.”³² The romantic attraction to the exotic operates as a veil of ignorance, allowing the romantic subject to defer any final form of political judgement. The romantic subject establishes distance between the subjective experience of life and the real, concrete relations of life according to Schmitt. Schmitt claims that this distance is used by romanticism to debunk ‘objective reality’ but rarely used to debunk the very notion of the subject itself:

He [the romantic subject] ironically avoids the constraints of objectivity and guards himself against being committed to anything. The reservation of all infinite possibilities lies in irony. In this way, he preserves his own inner, genial freedom, which consists in not giving up any possibility. By this means, however, he also defends himself against the objection that would necessarily destroy his pretensions: that all the promises and the grandiose projects he has opposed to the limited achievements of others are unmasked as a fraud by his own real production.³³

Romanticism celebrates the unmasking of the external world but is unwilling to extend this to reveal the workings of the subjective world. If romanticism were to rise to its own challenge, especially its *telos* of unmasking, then the subject itself would cease to exist. Romantic irony becomes a way of restricting the critical project to the external, concrete

³¹ *Ibid.*, p. 69.

³² *Ibid.*, p. 70.

³³ *Ibid.*, p. 72.

world without taking into account the constitutive dimension of the subject itself. Whereas Richard Rorty looks to the ironist to ensure that political vocabularies are constantly in flux, Schmitt rebukes the ironist for failing to ground the romantic project in the permanency of a concrete real.³⁴ Romanticism is unable to engage with the concrete because, when faced with the dire emergency, the romantic opts for *conversation* rather than *decision*.

The romantic subject thereby embodies the endless conversation Schmitt associates with liberalism. The lack of an 'authoritative tribunal' means that the romantic subject can only appeal to forms of reasoning that are based on the immediate, lived experience of each individual.³⁵ According to Rorty, "[i]n the liberal bourgeois world, the detached, isolated, and emancipated individual becomes the middle point, the court of last resort, the absolute."³⁶ Schmitt, on the other hand, cannot fathom the reduction of the authoritative to the emancipated individual. For Schmitt, impressionistic experience will never be a substitute for the concrete reality of life itself. A system of adjudication reliant upon the whims of subjectified occasionalism will never be able to outperform those forms of adjudication that take the decision as the highest expression of political rationality.

The romantic subject is unable to judge according to Schmitt. The romantic incapacity for ethical, legal, and political valuation stems from the fact that both revolutionary and conservative varieties of romanticism are incapable of discriminating between *rightness* and *wrongness*. The revolutionary, Schmitt claims, draws upon conceptions of natural rights and human rights to vindicate the radical project.³⁷ The conservative invokes a concept of historical right that blindly accepts *rightness* and *wrongness* on the basis of historical precedent; to the extent that it overlooks the need to determine *rightness* and *wrongness* in the here and now. Schmitt, most critically, looks to the theological as a determinant of right. "When God appears as the ultimate principle of political life in

³⁴ Richard Rorty, *Contingency, Irony, and Solidarity*, (Cambridge: Cambridge University Press, 1989), p. 73.

³⁵ *Ibid.*, p. 80.

³⁶ *Ibid.*, p. 99.

³⁷ *Ibid.*, p. 116.

legitimist theories of political philosophy, he has this status as the highest sovereign and lawgiver, as the ultimate point of legitimation, and thus in a normative – and thereby antiromantic – category.”³⁸

Romanticism is antithetical to the political because its subjects are unwilling or unable to decide when confronted with the dire emergency. The romantic is weak in the face of the political grouping of friend-and-enemy. If, as Schmitt contends in *The Concept of the Political*, a political theory rests upon its anthropology as to whether *man* is by nature good or evil, then romanticism turns these conceptual categories upside down.³⁹ The romantic gaze seeks to reconfigure conceptions of good and evil in order to draw attention to the implicit irony within categories. The wicked person, Schmitt notes, can be romanticised into another moral realm; such that their wickedness is now valued for its aesthetic productivity rather than its moral or political good.⁴⁰ The cumulative effect is that the concrete world is only intelligible when framed through an aesthetic one. “The simple consequence of this aesthetic political philosophy seems to be that the most beautiful person should govern the state: that first in beauty should be first in might (Keats).”⁴¹

Schmitt misrepresents the nuances of the romantic mode; but he does nonetheless drive home the claim that the political must be understood as an autonomous concept in human thought. Romanticism has turned the political decision into the political event, with all its aesthetic overtones and gestures. Objective reflection is not possible because understanding is conditional on the impressionistic: “It is the “fabulous” – at that time, one said romantic – impression of a person, a historical event, a philosophical, artistic, or literary achievement.”⁴² The underlying principles of political order, the decisive friend-and-enemy grouping, are banished from the romantic vocabulary. It is no longer possible to distinguish between one’s king and one’s lover.⁴³ This is primarily due to the romantic

³⁸ *Ibid.*, p. 116.

³⁹ Carl Schmitt, *The Concept of the Political*, p. 58.

⁴⁰ Carl Schmitt, *Political Romanticism*, pp. 124-125.

⁴¹ *Ibid.*, p. 126.

⁴² *Ibid.*, p. 131.

⁴³ *Ibid.*, p. 131.

tendency to express concrete relationships in terms of metaphor; but it is also due to the romantic desire to personalise concrete relations in terms of one's own experience.

Schmitt wants to strengthen the basic precepts of modernity, especially its hierarchical and antithetical understandings of order. Man / Woman; City / Country; Aristocratic / Bourgeoisie; Upper House / Lower House; Body / Soul; Person / Thing; Space / Time; Subjective interior / Superficial exterior; Past / Future; the Moment / Permanence; Right / Utility; Theory / Practice; Romantic / Classical; Germanic / Roman; Orient / Occident; Air / Earth.⁴⁴ Schmitt objects to the blending of these conceptually discrete categories. "Sometimes they [the above antitheses] are treated as parallel contrasts, sometimes as mere sounds and chords that blend, contrast, or harmonize in accordance with the oratorical effect in a single case."⁴⁵ These conceptual divisions are decisive to the autonomy thesis advanced in *The Concept of the Political*.

Schmitt treats these antitheses as objective conditions of knowledge. The romantic, on the other hand, regards these antitheses as rhetorical.⁴⁶ They are produced through words and, as such, they do not work in terms of commensurability in which word objectively corresponds to object. For Schmitt, this means that concepts are dispossessed of their inherent antagonisms. Schmitt describes romanticism as the "pretentious expansion of the aesthetic," holding it responsible for the loss of the political grouping of friend-and-enemy in liberalism.⁴⁷ The romantic desire to demonstrate that the objective world is merely the product of subjective reasoning means that discourse is dispossessed of its ability to discriminate between different domains. Each conceptual domain generates its own boundaries, enabling it to admit (and omit) into its sphere particular forms of conduct and knowledge. Schmitt's critique of romanticism stresses the dissolution of the binary through the romantic tendency to poeticise discourse. "In such a world," Schmitt declares, "all political and religious distinctions are dissolved into an interesting

⁴⁴ *Ibid.*, p. 138.

⁴⁵ *Ibid.*, p. 138.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, p. 160.

ambiguity.”⁴⁸ This binary logic is a core component of Schmittian ethics, supporting the claim that the political must be understood autonomously. Ambiguity rather than decisiveness undermines the capacity of the political to operate in terms of mastery. Antagonism also cannot be rationalised into a system of ethics that will allow for consensus to emerge; nor can the political be lessened by turning every event into an impressionistic poem. Schmitt is concerned that for the romantic “[e]very flower and every picture becomes an interlocutor in a discussion, sometimes as a listener and sometimes as a speaker. The entire world, the universe, is a conversation.”⁴⁹

Schmitt treatment of the romantic subject is itself “thoroughly romantic.”⁵⁰ Stephen Holmes attacks Schmitt’s historical account of romanticism: “From a historian’s standpoint, *Political Romanticism* contains a puzzling silence. Schmitt reduces the content of romantic thought to a narcissistic search for opportunities to express lyrical feelings.”⁵¹ Holmes regards Schmitt’s friend-and-enemy grouping as itself a romantic understanding of the world:

We might agree that having an enemy provides a fine reason for getting up in the morning. The innate yearning for set-tos and face-offs is familiar to every student of the human comedy. But Schmitt has little sense of the ridiculousness. For him, history is tragedy—or perhaps melodrama. Without the possibility of confronting a mortal enemy life cannot be serious, is devoid of sense.; The existential choice between them and us, where physical survival is at stake, gives “the political” its radiance, forges manly men, and permits the politically engaged to so above the frivolity of everyday life.⁵²

There is a dilemma here for Schmitt: can you escape being romantic if thought, culture, and consciousness is itself the product of the romantic *Weltgeist*? It is evident that Schmitt’s exceptional rendering of the political also rests upon a voluntarism, albeit less benign than that imagined by romanticism. Schmitt wants to claim that political

⁴⁸ *Ibid.*, p. 158.

⁴⁹ *Ibid.*, p. 140.

⁵⁰ Carl Schmitt, *Political Romanticism*, p. 118.

⁵¹ Stephen Holmes, *The Anatomy of Antiliberalism*, (Cambridge, MA: Harvard University Press, 1996), p. 44.

⁵² *Ibid.*, p. 41.

romanticism misunderstands the nature of political knowledge and conduct because it subjectively responds to the objective world. Yet, as the subsequent discussion on Schmitt's political theology makes clear, Schmitt's concept of the political is voluntarism (the free will of the individual subject) at a higher level. Schmitt does not talk in terms of the liberal subject but the exceptional subject as his image of the sovereign discloses.

At the heart of Schmitt's attack on the romantic spirit is a critique of the liberal metaphysical system. The subjectified occasionalism enacted through the romantic subject provides evidence of a fundamental epistemological blockage within liberalism according to Schmitt. The subjectified occasionalism of political romanticism "did not have the power – even in relation to itself and in spite of numerous psychological refinements and confessional subtleties – to objectify its intellectual nature in a theoretical or practical-substantive connection"⁵³ This lack of objective understanding experienced by the romantic subject discloses the epistemological blockage at the heart of the liberal metaphysical system. Destined to gaze upon the external world through individualised, subjective experience, the romantic subject cannot generate the type of narrative unity that would allow the world to be understood as a complete experience.

Under these conditions, the romantic subject engages in the "lyrical paraphrase of experience" rather than the direct negotiation of the conceptual and philosophical terrain that defines each domain (e.g., law, politics, morality, economics).⁵⁴ Political discourse thus becomes a series of platitudes that reveal little about the actual workings of the political. This type of subject follows political events with "marginal character glosses, catch phrases, viewpoints, emphases and antitheses, allusions and permutational comparisons, often agitated and excited, but always without making its own decision and assuming its own responsibility and risk."⁵⁵ Under romanticism, not everybody is called to be an artisan of the romantic *Weltgeist*; those who are left behind are without solidarity with other human subjects. Schmitt's concept of the political at least gives the subject an

⁵³ Carl Schmitt, *Political Romanticism*, p. 159.

⁵⁴ *Ibid.*, p. 159.

⁵⁵ *Ibid.*, p. 159.

intersubjective reality; enabling a political community in which the friend-and-enemy creates a solidarity based on the we/they distinction so described by Chantal Mouffe. Schmitt warns against confusing the ‘pretentious expansion of the aesthetic’ with authentic political energy.⁵⁶ In so doing he again highlights the epistemological blockage at the heart of liberalism; namely, the inability to conceive of an external world beyond the subjective domain. “An emotion that does not transcend the limits of the subjective,” Schmitt utters, “cannot be the foundation of a community.”⁵⁷ Moreover, he condemns romantic irony as a basis for “social crystallization,” since it cannot deliver the forms of thick solidarity that the agonistic concept of the political can realise through the friend and enemy distinction.⁵⁸ “Where political activity begins, political romanticism ends” proclaims Schmitt.⁵⁹

For Schmitt, the romantic subject is “suspended in the dynamic of an animated conversation.”⁶⁰ The romantic subject has no common vocabulary to draw upon when negotiating the boundaries of political order; the conversation means that order is in constant flux, rejecting the very fixity of norms. Schmitt holds political romanticism responsible for undermining the foundations of order within contemporary discourse. Order is a function of conceptions of the normal and the right. “[N]o society can discover an order without a concept of what is normal and what is right.”⁶¹ This leads Schmitt to argue “the normal is unromantic because every norm destroys the occasional license of the romantic.”⁶² The political community that lacks a fixed, normative foundation for order is – according to Schmitt’s own criteria – in grave danger of collapsing when faced with the burden of multiple, competing subjectivities. The romantic subject, as the living reflection of the liberal metaphysical system, is thereby unable to provide the epistemological conditions for order.

⁵⁶ *Ibid.*, p. 160.

⁵⁷ *Ibid.*, p. 161.

⁵⁸ *Ibid.*, p. 161.

⁵⁹ *Ibid.*, p. 160.

⁶⁰ *Ibid.*, p. 161.

⁶¹ *Ibid.*, p. 161.

⁶² *Ibid.*, p. 161.

Q: So what is political about romanticism? A: Nothing, according to Schmitt. Romanticism embodies what Schmitt believes to be the failings of the liberal metaphysical system. When the romantic sensibility is transposed onto politics there is a loss of political energy. This is because the decisive political grouping of friend-and-enemy no longer enjoys mastery and dominion over discourse. The romantic sensibility also turns raw political energy (the existential understanding derived from the decision) into an expression of a limited (and limiting) self. Schmitt attacks romanticism for rendering the political into aesthetic form. What is being condemned is not that the political is now dressed in the clothes of the aesthetic but, in fact, that the domain of the political is subjugated to another domain. Schmitt's conceptual realism, whereby each conceptual category commands its own specific dialectic, leads Schmitt to endorse philosophy in which each given practice – politics, ethics, economics, morality, and aesthetics – operates independently of other domains. Each practice is said to be autonomous because it corresponds to an objective world in which there are rigid designators of what constitutes that same practice. This is evident in the binary logic that Schmitt credits to all discourses, including, most importantly, the political itself. The romantic subject disrespects these objective distinctions by fostering an amorphous ethic. The specifically political characteristics of the political are thereby inundated by the frivolity other modes. Methodologically, this entails the overpowering of politics by other discourses that are not, in fact, called or open to politics. The autonomy of the political is diluted. Thus, the romantic obliterates the very conceptual distinctions that define a given practice in the first place.

By thinking that standards of adjudication and right can be rewritten at whim the romantic subject endangers the conceptual purity of practices. Romanticism knows no limits to discourse, seeking to make its romantic worldview entirely concordant with other conceptual realms. Thus Schmitt declares there to be no such as 'romantic law' or 'romantic ethics' because this would be akin to saying that there is 'lyrical ethics' or 'musical ethics.' Keep each conceptual category separate, Schmitt's *conceptual Realpolitik* requests, so that the internal dynamics of each practice can kept within their own, limited boundaries. Keep each conceptual category separate, nonetheless, involves

the simplification of discourse into pure types. This reductionism is a core weakness of Schmittian ethics. Unable to think of the political in terms of overlapping discourses, Schmitt's concept of the political works in terms of mastery and dominion by establishing politics as a master knowledge vis-à-vis all other domains.

4.2 The paradox of autonomy

There is a strange paradox in relation to Schmittian ethics. This paradox relates to Schmitt's desire to provide a truly *autonomous* concept of the political whilst, at the same time, remaining firmly within the tradition of Christian realism. On the one hand, Schmitt demands that concepts be judged in terms of the specific antagonisms inherent within each particular domain. On the other, nonetheless, Schmitt's concept of sovereignty operates as a dependent rather than an independent variable, invalidating the methodological claim that the concept of the political be assessed autonomously. The following section details the theological architecture of Schmitt's concept of the political, specifically his account of sovereignty. This architecture establishes a different concept of the political than that developed in *The Concept of the Political*, enabling a reading of Schmitt in terms of *Theopolitik* rather than *Realpolitik*. It is this theologised concept of the political which Schmittian ethics should be measured against rather than the autonomy claim.

4.3 The Sovereignty of the Exception

"Sovereign is he who decides on the exception" Schmitt declares in the opening paragraph of *Political Theology*.⁶³ Formulating the concept of the political in terms of the exception involves a more theologically driven account of politics than that contained in the friend-and-enemy grouping. For this reason, it is important to consider how theology establishes Schmitt's exceptional concept of the political and, in so doing, undercuts the very ambition of a concept of the political derived *autonomously*. Theology gives Schmitt's concept of the political its decisiveness, allowing it to bring order to the inherent anarchy associated with the exception. Related to Schmitt's theological

⁶³ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, (Cambridge, MA: MIT Press, 1985), p. 5.

rendering of the political, identified here as *Theopolitik*, is a claim about the need for a decisionist ethic in both legal and political theory. This decisionist ethic is not just confined to defining the amity lines of political community but also, more broadly, concerned with the conditions under which order itself is attained. Schmitt thinks that the liberal model lacks this decisionist capacity owing to the fact that it operates in terms of impersonal rules rather than the decision.

Schmitt's account of sovereignty works in terms of the exception. Sovereignty is defined as *he* who decides on the exception. Schmitt thereby links sovereignty to the borderline case. "The definition of sovereignty," Schmitt notes, "must therefore be associated with a borderline case and not with routine."⁶⁴ Schmitt contests the value of the liberal jurisprudential model, especially its tendency to look to the norm as a means of determining conduct in the emergency. Exceptions to the rule are more powerful determinants of political right and conduct than the rule itself: "The exception, which is not codified in the existing legal order, can at best be characterised as a case of extreme peril, a danger to the existence of the state, or the like. But it cannot be circumscribed factually and made to conform to a preformed law."⁶⁵ Sovereignty thus refers to a higher power, not a derived power in which subjects authorise another to act on their behalf. Sovereignty cannot be reduced to the popular decision, resolved democratically through participatory forms. Sovereignty consists in the "concrete application" of the decision. The sovereign is thus defined as *he* "who decides in a situation of conflict what constitutes the public interest or interest of the state, public safety and order, *le salut public*, and so on."⁶⁶

The sovereign thus enjoys a formal, decisionist role that involves a concept of the political that is not just confined to the concrete friend-and-enemy grouping. Sovereignty (and the sovereign) is without limits because the question about what constitutes the public interest or interest of state or public order and safety can never be foreclosed. It is the very concept of the exception that allows the sovereign to achieve *his* sovereignty. "It

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, p. 6.

⁶⁶ *Ibid.*

is precisely the exception,” Schmitt argues, “that makes relevant the subject of sovereignty, that is, the whole question of sovereignty. The precise details of an emergency cannot be anticipated, nor can one spell out what may take place in such a case, especially when it is truly a matter of extreme emergency and of how it is to be eliminated.”⁶⁷ The conduct of the sovereign, as the decisive political knowledge, is not subject to controls. For this reason, the liberal emphasis on the limitation of powers through the constitution does not satisfy the Schmittian requirements of sovereignty. Law cannot be sovereign (contra to the liberal jurisprudential model) because it cannot decide on its own what constitutes a public threat and, when required, to establish the conditions of public order and safety.

For Schmitt, modern constitutionalism wants to eliminate the sovereign question from the political. A belief in the regulative capacity of law – Grotius, Kant, and Kelsen – means that law becomes the primary means by which a political community establishes public order and safety. Using the rule of law to determine the content of the political decision involves the disavowal of the sovereign and sovereignty. The exception cannot be removed from the world by juristic means. Schmitt’s exception is expressed in terms of a sublime, symbolising the highest region of both political conduct and knowledge. The exception stands outside a *normally valid legal system*.⁶⁸ But it is not necessarily the case that this ontological condition (standing outside the norm) cannot contribute anything to the normative order more generally. It is the exception that defines the content of the norm, allowing the sovereign to decide when and whether “the constitution needs to be suspended in its entirety.”⁶⁹ For Schmitt, placing the emphasis on the sovereignty of law or the sovereignty of the people is inherently problematic. This is because sovereignty involves the final determination of an order. Looking to the people (popular sovereignty) or to the law (juristic sovereignty) is unsatisfactory.

In this regard, Schmitt admires Jean Bodin (1530-1596) for linking sovereignty to the practical concern of state stability. Sovereignty cannot be understood *juristically* but

⁶⁷ *Ibid.*, pp. 6-7.

⁶⁸ *Ibid.*, p. 7.

⁶⁹ *Ibid.*

emerges as practical conduct and knowledge when a normal order is overpowered by the exception. The fact that Schmitt talks in terms of the exception (defined at various times as the borderline case, the critical case, the extreme case, and the dire emergency) means that the concept of 'sovereignty' is located in a domain which exceeds the contemporary; that is to say, sovereignty does not depend upon pre-understandings that circulate widely within discourse but on conditions that miraculously present themselves as dilemmas that require the authority of the sovereign. Bodin is significant for Schmitt because although working within a natural law tradition Bodin allows for the suspension of universal law in the emergency. According to Bodin, Schmitt notes, "the prince is duty bound toward the estates or the people only to the extent of fulfilling his promise in the interest of the people; he is not so bound under conditions of urgent necessity."⁷⁰

Schmitt praises Bodin for looking at sovereignty in terms of the obligation that a prince has to natural law in both normal (stable) and emergency (unstable) contexts. According to Schmitt: "Bodin asked if the commitments of the prince to the estates or the people dissolve his sovereignty. He answered by referring to the case in which it becomes necessary to violate such commitments, to change laws or to suspend them entirely according to the requirements of a situation, a time, and a people."⁷¹ The fact that a normative order can be reconfigured at the will of the sovereign – owing to exigencies of time, space, and context – places Schmitt's concept of sovereignty in an absolute framework. The sovereign is not duty bound to obey law (*juristic sovereignty*) nor the will of the people (*popular sovereignty*) but called to be decisive when the stability of a dominant order is called into question. In view of this fact, Schmitt notes that sovereignty itself disappears when it must answer to another: "If in such cases the prince had to consult a senate or the people before he could act, he would have to be prepared to let his subjects dispense with him."⁷² Sovereignty, as an expression of the decisionist capacity of the political, involves the immunity of the prince vis-à-vis the principality. The mark of sovereignty, Schmitt suggests, is the "authority to suspend valid law."⁷³

⁷⁰ *Ibid.*, p. 8.

⁷¹ *Ibid.*

⁷² *Ibid.*, pp. 8-9.

⁷³ *Ibid.*, p. 9.

The Schmittian account of sovereignty does not think of sovereignty in terms of law (juristic sovereignty) or the power of the people (popular sovereignty). Both these models of sovereignty are, in essence, weak accounts of sovereignty. Their weakness stems from the fact that they are unable to act decisively when the state faces both internal and external challenges. The liberal model makes *bellum omnium contra omnes* the routine of constitutional politics. Every party, Schmitt suggests, wants to remake the world according to its image of the general good.⁷⁴ This way of thinking about constitutional politics, where problems of order can be resolved through popular will, is problematic according to Schmitt. Law itself is not the product of norms; rather, what constitutes law is dependent on the decision. The claim being advanced by Schmitt is that norms are products of decisions: “Like every other order,” Schmitt announces, “the legal order rests on a decision and not on a norm.”⁷⁵

Schmitt thereby links sovereignty to the question of competency and action when the state is confronted with the supreme emergency. Competency is defined as *he* “who is competent to act when the legal system fails to answer the question of competence.”⁷⁶ Sovereignty involves answering the following question: “Who is responsible for that which has not been anticipated?”⁷⁷ Schmitt’s account of sovereignty involves answering the question about who has competency when the legal system is in question. The jurisprudential model of sovereignty (where sovereignty is expressed through legal agreement) is unable to fulfil this role according to Schmitt. *Juristic sovereignty* stresses the equality of persons before the law; since all are equal before the law then individual claims about truth are always valid claims and inherently irreconcilable. *Popular*

⁷⁴ *Ibid.*

⁷⁵ A fundamental problem with Schmitt’s distinction between normative order and decisionist order is the fact that the decision is not conceived in terms of a normative landscape. This conceptual realism allows Schmitt to overlook the way in which the decision itself is constituted through norms, whether they be pre-understandings or dominant understandings about how the decision itself is to function. The fact that Schmitt relies upon Bodin is suggestive of the fact that Schmitt thinks that sovereignty (and definitions of the sovereign) do not exclusively depend on the supreme emergency but also involve a prior normative landscape. If the sovereign were beyond norms, as Schmitt suggests, then this would mean that the sovereign is inherently untheorisable and, accordingly, not worthy of extended treatise. *Ibid.*, p. 10.

⁷⁶ *Ibid.*, p. 11.

⁷⁷ *Ibid.*, p. 10.

sovereignty stresses the capacity of a people to collectively determine the field of political possibility; since liberalism conceives of the people pluralistically Schmitt thinks it impossible for a people to generate an overarching framework to secure public order and safety. Sovereignty suffers when conceived in terms of either a juristic ethic or a popular ethic. This is reflected in Schmitt's claim that a "jurisprudence concerned with ordinary day-to-day questions has practically no interest in the concept of sovereignty."⁷⁸

Sovereignty always involves the exception according to Schmitt because it involves consideration of the following question: "Who is supposed to have unlimited power?"⁷⁹ The exception pushes law to its limits, revealing the fragility of jurisprudence to command obedience. "What characterises an exception," Schmitt argues, "is principally unlimited authority, which means the suspension of the entire existing order."⁸⁰ For Schmitt, the principle reality of the political is that it takes a state form. Law itself may recede when confronted with the emergency but the state, as the primary means of securing public order and safety, must decisively rule. The state is allowed to occupy the position of the sovereign – involving absolute mastery and dominion in the domain of the political – because of the fact that the state can authoritatively compel obedience. Alternative accounts of sovereignty, notably juristic and popular, are insufficiently enabled to establish a dialectic structure in which protection and obedience are inseparable. The state is always prior to legal norms according to Schmitt and, for this reason, it means that the state can suspend a normative order with the objective of securing the state against both internal and external threat. A decision about what constitutes the exception thus involves a decision about the conditions by which normal, routine legality can be suspended for the preservation of higher forms legality (see Chapter 6 for a fuller discussion of Schmitt's concept of *supralegality*). Schmitt expresses this in his claim that the "decision frees itself from all normative ties and becomes in the true sense absolute."⁸¹ This means that the legality of a particular order is always

⁷⁸ *Ibid.*, p. 12.

⁷⁹ *Ibid.*, p. 11.

⁸⁰ *Ibid.*, p. 12.

⁸¹ *Ibid.*

situational. A normative order can be revoked at the will of the state and, because these conditions defy specification, legality cannot be codified.

Schmitt wants to give the exception a placement in the juristic. The exception is not just the suspension of the juristic but, in fact, the means by which the juristic can be understood. The liberal jurisprudential model equates normal conceptions of law, predicated on routine, with legality. Schmitt establishes a dual ontology of legality in which legality is assessed in terms of whether it is subject to a normal or exceptional regime. The exception produces a higher form of legality than that associated with legality produced through *juristic sovereignty* and/or *popular sovereignty*. Schmitt claims that “[t]he exception is that which cannot be subsumed; it defies general codification, but it simultaneously reveals a specifically juristic element—the decision in absolute purity.”⁸² This dual ontology means that law, construed as codified legality, is associated with a lower type of legality: “Every general norm demands a normal, everyday frame of life to which it can be factually applied and which is subjected to its regulations. The norm requires a homogenous medium.”⁸³ The exception, on the hand, cannot be framed in relation to everyday life and, because it does not manifest itself through a normal regime, lacks an immediate ontology. The use of a normal regime to combat chaos is thus specifically rejected by Schmitt: “There exists no norm that is applicable to chaos. For a legal order to make sense, a normal situation must exist, and he is sovereign who definitely decides whether this normal situation actually exists.”⁸⁴

Schmitt’s exceptional account of sovereignty stands in direct opposition to Lockean and Kantian conceptions of the constitutional state. Attempting to regulate the exception places too much faith in the capacity of rationalism to moderate political knowledge and conduct. Regulation of the exception can also be understood, in Schmittian terms, as the betrayal of the very notion of sovereignty. Thus, “[e]mergency law was no law at all for Kant. The contemporary theory of the state reveals the interesting spectacle of the two tendencies facing one another, the rationalist tendency, which ignores the emergency, and

⁸² *Ibid.*, p. 13.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

the natural law tendency, which is interested in the emergency and emanates from an essentially different set of ideas.”⁸⁵ Schmitt associates rationalism with an inability to come to terms with the exception, manifested in the claim that “the exception proves nothing and that only the normal can be the object of scientific interest.”⁸⁶ This is given its clearest articulation by Schmitt when he claims that in order to study the general you need to be alert to the extreme boundaries of the exception:

It [the exception] reveals more clearly than does the general. Endless talk about the general becomes boring: there are exceptions. If they cannot be explained, then the general cannot be explained. The difficult is usually not noticed because the general is not thought about with passion but with a comfortable superficiality. The exception, on the other hand, thinks the general with intense passion.⁸⁷

Schmitt’s exceptional notion of political sovereignty affirms the importance of philosophy which takes a concrete form: “Precisely a philosophy of concrete life must not withdraw from the exception and the extreme case, but must be interested in it to the highest degree.”⁸⁸ Schmitt links the development of a ‘philosophy of concrete life’ to the need for the sovereign to determine the conditions by which a normal legal regime can be suspended. The exception involves a concrete relationship to the world because of the fact that it challenges the normative precepts that regulate the liberal jurisprudential model. Schmitt repeats the claim that the *exception is more interesting than the rule* and, in so doing, associates the exception with a higher form of legality than that advanced through rationalism. The fact that the exception gives deeper insights into legality than the rule affirms the dual ontology of legality advanced by Schmitt. This leads Schmitt to claim that “[t]he rule proves nothing; the exception proves everything: It confirms not only the rule but also its existence, which derives from the exception.”⁸⁹

⁸⁵ *Ibid.*, p. 14.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*, p. 15.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

The Schmittian concept of sovereignty is in stark opposition to the normative recoding of sovereignty in liberal jurisprudence. Hans Kelsen seeks to demonstrate why thinking of sovereignty in terms of *supreme power* or *supreme order* represents a partial view of sovereignty. “To be sovereign,” Kelsen declares, “seems to be incompatible with being subject to a normative order; thus to maintain the idea of the state as a supreme authority this term is understood to mean only a supreme *legal* authority, so that ‘sovereignty’ of the state means only that the state is not subject to its own legal order.”⁹⁰ Kelsen is concerned that this type of thinking, as is contained in Schmitt’s exceptional notion of sovereignty, results in sovereignty being denied its normative status.⁹¹ The Schmittian account of sovereignty thinks of the sovereign as a “kind of superman or superhuman organism.”⁹² Kelsen takes issue with this extreme hypostatization of sovereignty. This is because Kelsen understands law as the artefact of human will not, contrary to Schmitt, the product of an exceptional lawmaker who determines when law itself can be suspended. This is reflected in Kelsen’s understanding of law, especially at the international level. “What we call society or community,” Kelsen declares, “is either the factual coexistence of individuals or a normative order of their mutual behaviour.”⁹³ This can be contrasted with the Schmittian concept of sovereignty which, owing to its exceptional nature, dismisses the capacity of normative order to generate political community. Schmitt works from the premise that normative order is always conditional on a higher form of legality, emerging only through the exception: “In the exception the power of real life breaks through the crust of a mechanism that has become torpid by repetition.”⁹⁴

Schmitt and Kelsen are involved in similar debates about sovereignty, although they do offer radically different answers to the question about how an order or *nomos* is to be attained. Nonetheless, they do think of the relationship between politics and law as involving sovereignty at the core. Whether there is the possibility of reconciling

⁹⁰ Hans Kelsen, ‘Sovereignty and International Law,’ in W. J. Stankiewicz (ed.), *In Defence of Sovereignty*, (New York: Oxford University Press, 1969), p. 115.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ Carl Schmitt, *Political Theology*, p. 15.

Schmitt's extra-legal account of sovereignty with Kelsen's normative account of sovereignty would depend on a mutual recognition of a shared tradition of thinking about sovereignty in legal and political thought. This shared tradition of sovereignty places the emphasis on the authoritative allocation of decisions within a political community. Accordingly, Schmitt argues against Kelsen's normative recoding of sovereignty for the reason that he thinks that this approach neglects the need for an authoritative entity. This normative recoding stresses the intersubjective dimension of law (sociology of law) rather than law as legality which is established through an exceptional will.

Schmitt claims that Kelsen's normative science places too much emphasis on the normative and, for this reason, it is unable to derive legality from the concrete experience of the exception. According to Schmitt, "Kelsen solved the problem of sovereignty by negating it."⁹⁵ Schmitt associates this negation of sovereignty with Kelsen's desire to turn sovereignty into a normative rather than an exceptional order. Asking that sovereignty be assessed in terms of how an authoritative order is established through *real* human wills challenges the Schmittian notion of sovereignty which depends on the existence of an *exceptional* will. The purity of law, as bound up in Schmitt's notion of legality as the chance to compel obedience, involves the sovereign being in a position to determine when normal conditions of legality can be suspended. Thus, Schmitt's exceptional account of sovereignty is incompatible with Lockean conceptions of law. Locke distinguishes *law* from *commission*; the former expresses legality through a process of contract and authorisation, the latter understands legality as derived from divine monarchical right.⁹⁶ Both Locke and Kelsen, as defenders of the liberal model, reduce legal prescription down to *how* decisions are to be made; to the detriment of *who* should decide:

But he [Locke] did not recognize that the law does not designate to whom it gives authority. It cannot be just anybody who can execute and realize every desired legal prescription. The legal prescription, as the norm of decision, only designates how decisions be made, not who should decide. In the absence of a pivotal authority, anybody can refer to the correctness

⁹⁵ *Ibid.*, p. 21.

⁹⁶ *Ibid.*, p. 32.

of the content. But the pivotal authority is not derived from the norm of decision. Accordingly, the question is that of competence, a question that cannot be raised by and much less answered from the content of the legal quality of a maxim.⁹⁷

The fact that a normative order cannot generate its own ‘pivotal authority’ endorses the Hobbesian account of legality in which *auctoritas, non veritas facit legem*. Schmitt admires Hobbes because he refuses to allow the ‘concrete sovereignty of the state’ to be undermined by a normative order.⁹⁸ The liberal jurisprudential model is too concerned with ‘substantive correctness’ that it is unable to come to terms with the question of legal competence. This liberal model results in a jurisprudence which locates legality in norms rather than the independent meaning that Schmitt associates with the decision on the exception.⁹⁹ Schmitt’s notion of sovereignty stresses who is competent to act when normative order has been suspended. The decision about competency is too important to be left to a normative order (since normative order is always an expression of particular interests). For this reason, the question of competency cannot be conceived abstractly; competency involves the personalisation of the decision. Jurisprudence must consequently fulfil the following criteria for Schmitt: (a) the content of the decision must be grounded in the concrete *not* the transcendental; (b) the content of the decision involves the practical question of competency *not* technical or abstract consideration of substantive right; and (c) the content of the decision involves *auctoritas* rather than *veritas* which means that aesthetic considerations must be kept out of jurisprudence.

4.4 Sovereignty as miracle

Schmitt’s concept of sovereignty has stressed the need for the state to determine, with concrete clarity, the conditions by which a normal legal order can be suspended for the sake of securing a higher level of public order and safety. It was observed that the question of *who* is compelled to decide is accorded greater significance than the question of *how* decisions are to be made. Schmitt’s concept of sovereignty remains loyal to the notion of the sovereign; sovereignty cannot be shared democratically (*popular*

⁹⁷ *Ibid.*, pp. 32-33.

⁹⁸ *Ibid.*, p. 33.

⁹⁹ *Ibid.*, p. 35.

sovereignty) nor reconfigured normatively through the rule of law (*juristic sovereignty*). Sovereignty involves the identification of legal competency when a normative order has been suspended and/or ceases to provide an authoritative structure for decision-making. The liberal jurisprudential model, Schmitt argues, is useless when confronted with a constitutional emergency; its desire to establish a legal order through normative maxims involves the very negation of the concept of sovereignty. Sovereignty cannot be recodified through normative prescription and, for this reason, the liberal model cannot sufficiently respond to the concrete urgency of the decision. Schmitt is adamant that sovereignty is a *practical* rather than an *abstract* discourse, involving *real* questions about who is competent to act rather than *normative* considerations of political and/or legal right. A fundamental problem with Schmitt's assessment of sovereignty is that the definition of sovereign competency is determined largely by a theological vision of the world. Sovereignty cannot be understood autonomously – in terms of its specific tensions – but only makes sense when phrased in theological terms. Sovereignty is a *political theology* for the sole reason that:

All significant concepts of the modern theory of the state are secularized theological concepts not only because their historical development—in which they were transferred from theology to the theory of the state, whereby, for example, the omnipotent God became the omnipotent lawgiver—but also because of their systematic structure, the recognition of which is necessary for a sociological consideration of the concepts. The exception in jurisprudence is analogous to the miracle in theology. Only by being aware of this analogy can we appreciate the manner in which the philosophical ideas of the state developed in the last centuries.¹⁰⁰

Schmitt argues that there is a systematic relationship between jurisprudence and theology. The fact that Schmitt links the exception in jurisprudence to the miracle in theology reveals Schmitt's inability to conceive of the political autonomously. Modern conceptions of sovereignty, whether operating juristically and/or popularly, provide a faulty representation of the sovereign according to Schmitt. The Kantian injunction on reason – “Have courage to use your own reason!” – profoundly damages the capacity of the sovereign to establish legal competency. This is because the Enlightenment emphasis

¹⁰⁰ *Ibid.*, p. 36.

on the constitutional state consciously rejects the exception according to Schmitt. In seeking to initiate the right procedure to contain the exception the modern constitutional state thinks itself beyond both metaphysics and theology. “In a positivistic age,” Schmitt narrates, “it is easy to reproach an intellectual opponent with the charge of indulging in theology or metaphysics.”¹⁰¹ The modern constitutional state has thus “banished the miracle from the world” and, in so doing, has denied the possibility of sovereign intervention in a legal order.¹⁰²

Kelsen’s patterning of sovereignty stresses the way in which norms are the product of intersubjective agreement concerning the validity of a given order. Kelsen assesses the validity of norms in the following terms: “Norms are valid for those whose conduct they regulate.”¹⁰³ This leads Kelsen to claim that jurisprudence “sees the law as a system of general and individual norms” and, for this reason, he claims that “facts are considered in this jurisprudence only to the extent that they form the content of legal norms.”¹⁰⁴ Schmitt rejects Kelsen’s normative reconfiguration of legality on this basis that it rests upon a normative lawfulness rather than lawfulness established through the exception. According to Schmitt, Kelsen’s concept of legal order is “based on the rejection of all “arbitrariness,” and attempts to banish from the realm of the human mind every exception.”¹⁰⁵

Related to the liberal abandonment of the exception is the secularisation of the sovereignty through the modern state. Schmitt is concerned that the modern theory of the state involves the rationalisation of authority, endangering the very concept of sovereignty by attempting to justify the authority of the state by *rational* means. According to Schmitt, “viewed from the history of ideas, the development of the nineteenth-century theory of the state displays two characteristic moments: the elimination of all theistic and transcendental conceptions and the formation of a new

¹⁰¹ *Ibid.*, pp. 38-39.

¹⁰² *Ibid.*, p. 37.

¹⁰³ Hans Kelsen, ‘The Pure Theory of Law and Analytical Jurisprudence,’ *Harvard Law Review*, Vol. 55, No. 1 (Nov., 1941), p. 50.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*, p. 41.

concept of legitimacy.”¹⁰⁶ This contempt for both state authority and the theistic can be observed in Engels’ claim that “[t]he essence of the state, as that of religion, is mankind’s fear of itself.”¹⁰⁷ For Schmitt, the very basis of sovereignty is that it elides rational justification. Attempting to give sovereignty a foundation in the everyday, expressed in the concept of popular sovereignty, is inherently problematic for Schmitt. The constitutive foundations of sovereignty cannot be expressed popularly; sovereignty is the divine expression of the metaphysical realm, emerging concretely through the exception.

The liberal jurisprudential model uses publicity as a means of justifying the authority of law; the Schmittian juridical model does not derive its authority through justification. Schmitt’s concept of sovereignty is cloaked in the secrecy of the exception. Defying the positivistic theory of the state, where sovereignty is expressed in terms of a democratic process of authorisation, Schmitt does not think of sovereignty as residing in the *pouvoir constituant* of the people.¹⁰⁸ The modern state has overlooked the decisive relationship that the miracle gives the sovereign, preferring to concentrate instead on the constitution of the sovereign through both *active* and *tacit* forms of consent. This leads Schmitt to claim that:

... the necessity by which the people always will what is right is not identical with the rightness that emanated from the commands of the personal sovereign. In the struggle of opposing interests and coalitions, absolute monarchy made the decision and thereby created the unity of the state. The unity that a people represents does not possess this decisionist character; it is an organic unity, and with national consciousness the ideas of the state originated as an organic whole. The theistic as well as the deistic concepts of God become thus unintelligible for political metaphysics.¹⁰⁹

Schmitt links the decline in traditional political metaphysics, with its emphasis on the theistic dimensions of sovereignty, to the emergence of romanticism as a cultural movement. In discussing the philosophy of state, Schmitt attacks German romanticism

¹⁰⁶ *Ibid.*, p. 51.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*, p. 52.

¹⁰⁹ *Ibid.*, p. 49.

for introducing the ‘odd trait’ of ‘everlasting conversation’ into contemporary state theory.¹¹⁰ Juristic thinking must be informed by the personalised decision; romanticism lacks the ability to conceive of the state in terms of the decision, laying the emphasis on the capacity of rational actors to engage in conversation about the ends of state. Schmitt looks to the Catholic political theory of de Maistre, Bonald and Donoso Cortés as a means of counterbalancing the romantic distortion of the state through the principle of endless conversation. Schmitt sides with de Maistre in seeing value in dictatorship above everlasting conversation within political discourse. According to Schmitt, “de Maistre spoke with particular fondness of sovereignty, which essentially meant decision.”¹¹¹ Schmitt admires de Maistre for making *infallibility* synonymous with *sovereignty*. This theologised conception of sovereignty, exercised through a sovereign, mandates the state to make decisions; thereby closing off the liberal understanding of the state as a site for conversation and deliberation.

Schmitt’s theological rendering of sovereignty also depends on the infallibility of the sovereign in the face of the dire emergency. If the sovereign is unable to determine the conditions by which normal law can be suspended then *he* has failed in *his* sovereign duty and, as such, is not worthy of the identity of the sovereign. Sovereignty generates its own infallibility; a sovereign ethic can never be tentative or conditional. For this reason, de Maistre’s linkage of sovereignty to infallibility affirms the value of the decision in Schmitt’s theory of the state. According to Schmitt, “a decision is inherent in the mere existence of a governmental authority, and the decision as such is in turn valuable precisely because, as far as the most essential issues are concerned, making a decision is more important than how a decision is made.”¹¹² Like the Catholic political theory of de Maistre and Donoso Cortés, Schmitt affirms a negative ontology of the human subject. This understanding of the human subject provides Schmitt with a means of justifying a repressive regime. Arguing against anarchy Schmitt inverts the following anarchist maxim: “The people are good, but the magistrate is corruptible.”¹¹³ Placing the decision

¹¹⁰ *Ibid.*, p. 53.

¹¹¹ *Ibid.*, p. 55.

¹¹² *Ibid.*, pp. 55-56.

¹¹³ *Ibid.*, p. 55.

(about when normal law can be suspended) in the hands of the sovereign means that political order is not imperilled by the negative ontology associated with the human subject. In the Schmittian juridical model authority, state and government are the primary means of securing order. This ‘sovereign fix’ is at odds with the Enlightenment belief in reason, with its supposition that evil can be tamed through the right education.

A political ontology that expresses itself *positively* provides an insufficient foundation for securing political order according to Schmitt. What matters is less the fact that a political order is truthful – expressing an eternal truth about politics – and more the fact that a political order has been able to achieve mastery and dominion given the inherent anarchy of the world. Schmitt endorses de Maistre’s authoritarian ethic when he claims that not to be subject to error and not to be accused of error are the same things; that is to say, whether the sovereign is guilty of error is of peripheral concern than the sovereign being publicly accused of error. The sovereign is the highest authority; no parties or processes can be instituted to review whether, in fact, the sovereign is guilty of error. To do so would be to undermine the very practice of sovereignty and its presupposition that the exception is more powerful than the norm. This is expressed in Schmitt’s colourful expression of human history in which “[h]umanity reels blindly through a labyrinth that we call history, whose entrance, exist, and shape nobody knows; humanity is a boat aimlessly tossed about on the sea and manned by a mutinous, vulgar, forcibly recruited crew that howls and dances until God’s rage pushes the rebellious rabble into the sea so that quiet can prevail once more.”¹¹⁴

God, as the ultimate expression of Schmitt’s concept of the sovereign, is able to establish unity within a political community. The liberal model lacks the ability to conceive of the political community as a collectivity. This stems from the fact that a commitment to everlasting conversation results in a timid understanding of political community. Donoso Cortés’ presentation of the bourgeoisie as a “discussing class” (*una clase discutidora*) is taken as evidence by Schmitt of the liberal desire to evade the decision. Thus, according to Schmitt, a “class that shifts all political activity onto the plane of conversation in the

¹¹⁴ *Ibid.*, pp. 58-59.

press and in parliament is no match for social conflict.”¹¹⁵ Schmitt’s criticism of the secularism of the Enlightenment can be understood as a critique of the concept of the political that emerges in liberal constitutionalism. The demythologisation of sovereignty, turning the sovereign question into one of deliberative reason, undermines the implicit mastery associated with Schmitt’s concept of the political. According to Schmitt “liberal constitutionalism attempted to paralyze the king through parliament but permitted him to remain on the throne, an inconsistency committed by deism when it excluded God from the world but held onto its existence.”¹¹⁶

This liberal approach, where the sovereign has *his* powers limited whilst still sitting atop a constitution, is understood as the central tragedy of the secular within liberal politics for Schmitt. Sovereignty, in the sense of a sovereign who can decide when normal laws can be suspended, is needed to ensure that the daily practice of liberal politics is unimpeded; but at the same time the very notion of a sovereign, as the source of the final and authoritative decision, is at odds with the liberal desire to transfer sovereignty away from the exception (*exceptional sovereignty*) to a normal routine (*juristic sovereignty* and *popular sovereignty*). The tragedy of the liberal model is that its normal order of sovereignty is ultimately dependent on a higher notion of the sovereign. Schmitt expresses this in the following terms:

Although the liberal bourgeoisie wanted a god, its god could not become active; it wanted a monarch, but he had to be powerless; it demanded freedom and equality but limited voting rights to the property classes in order to ensure the influence of property and education on legislation, as if educated and property entitled that class to repress the poor and uneducated; it abolished the aristocracy of blood and family but permitted the impudent rule of the moneyed aristocracy, the most ignorant and the most ordinary form of an aristocracy; it wanted neither the sovereignty of the king nor that of the people. What did it actually want?¹¹⁷

¹¹⁵ *Ibid.*, p. 59.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*, pp. 59-60.

The atheistic outlook of liberal politics symbolises the inability of the liberal model (and liberal constitutionalism) to establish an authoritative structure for decision-making. The Schmittian account of the sovereign, as dependent upon the negative ontology associated with Catholic theology, takes the decision as the ultimate test of its sovereignty. The liberal account of the sovereign, contrastingly, conceives of sovereignty as a quality of institutions and constitutional processes rather than as a corporate entity that determines the final decision. In the former, sovereignty depends upon the decision; in the latter, sovereignty is something that is negotiated through publicly agreed rules and intersubjective agreement about what constitutes sovereignty in a particular instance. Liberalism culminates in *discussion* not *decision*. “The essence of liberalism,” Schmitt declares, “is negotiation, a cautious half measure, in the hope that the definitive dispute, the decisive bloody battle, can be transformed into a parliamentary debate and permit the decision to be suspended forever in an everlasting dictatorship.”¹¹⁸

Liberalism delays the decision; only when the normal routine is subject to internal and external challenge does liberalism look to the sovereign for the restoration of its order. Anarchists, like Proudhon and Kropotkin, think that the decision can be evaded altogether. The significance of Schmitt’s rejection of both liberalism and anarchism is that, in so doing, it reaffirms the importance of the exception to political and legal thought. Liberalism operates in terms of rules, generating discourse based on everlasting discussion about the content of the decision that it can never decide. Anarchism, on the other hand, rejects the very notion of an authoritative structure by which the decision can be made. Schmitt’s abstractions, involving talk of *the decision* and *the exception*, serve a theological order which aims at the establishment of a perpetual authority. If Schmitt derides liberalism for creating everlasting discussion then Schmitt himself can be accused of establishing an everlasting authority which is answerable to nobody. Schmitt’s political theology of the exception works from the premise that political judgement is mastery and dominion at the highest possible level: “All moral valuations lead to theology and to an authority that artificially imposes an alien or extrinsic “ought” on the natural and intrinsic truth and beauty of human life. The sources of such authority are

¹¹⁸ *Ibid.*, p. 63.

greed and lust for power, and these result in a general corruption of those who exercise over as those over whom it is exercised.”¹¹⁹

A political theology of the exception enables the sovereign to straddle divisions with the political community (transcending the liberal politics of the everlasting conversation) as well as to offer a way of overcoming the implicit corruption associated with the exercise of power. For Schmitt, *quis custodiet ipsos custodies* is resolved by looking to the sovereign; and since the sovereign is not compelled to account for *his* conduct in terms of a rationalised principle of political right then there is no need for sovereignty to be accountable. Liberalism attempts to institute sovereignty without a sovereign and, in so doing, thinks it possible to substitute *absolute sovereignty* with *juristic sovereignty* and/or *popular sovereignty*. There is a fundamental problem with the liberal understanding of sovereignty according to Schmitt. This stems from the fact that liberalism constructs sovereignty through constitutionalism:

They [liberals] wanted a monarch, in other words a supreme personal authority, with an independent will and independent action. Yet they made the king a mere executive organ with his every act dependent on the consent of the cabinet, thus removing once again that personal element. They wanted a king who would be above parties, who would thus also have to be above the people’s assembly; and simultaneously insisted that the king could not do anything but execute the will of this people’s assembly. They declared the person of the king to be inviolable but had him take an oath on the constitution, so that a violation of the constitution became possible but could not be pursued.¹²⁰

Constitutionalism will always be secondary to decisionism in Schmitt’s political universe. The contempt reserved for discussion, as a deliberative ethic aimed at the establishment of constitutional unity, leads Schmitt to accept dictatorship as the primary means of securing the decision. “Dictatorship is the opposition of discussion” declares Schmitt when stressing the need for a decisionist ethic in juridical practice.¹²¹ A truly political ethic is the ethic which decides; both liberalism and anarchism are

¹¹⁹ *Ibid.*, pp. 64-65.

¹²⁰ *Ibid.*, p. 60.

¹²¹ *Ibid.*, p. 63.

fundamentally incapable of decision because they have radically decentered the notion of the sovereign, substituting it with a procedural model of mastery and dominion. This inferior model of politics involves the flattening of the political so that there are “no longer political problems, only organizational-technical and economic-sociological tasks.”¹²² This economical-technical thinking, Schmitt suggests, is no longer “capable of perceiving a political idea.”¹²³ Looking to constitutionalism as a means of establishing sovereignty is deemed an insufficient way of achieving mastery and dominion in the political domain. Constitutionalism is associated with a desire to contain ‘politics’ in a rational framework, reflecting a misleading view of the modern state:

The modern state seems to have actually become what Max Weber envisioned: a huge industrial plant. Political ideas are generally recognized only when groups can be identified that have a plausible economic interest in turning them to their advantage. Whereas, on the one hand, the political vanishes into the economic or technical-organizational, on the other hand the political dissolves into the everlasting discussion of cultural and philosophical-historical commonplaces, which, by atheistic characterization, identify and accept an epoch as classical, romantic, or baroque. The core of the political idea, the exacting moral decision, is evaded in both.¹²⁴

The counter-revolutionary philosophers of state – apologists for dictatorship – are praised by Schmitt for the “consistency by which they decide.”¹²⁵ The crucial element of their counter-revolutionary philosophy is the unanswerability of the sovereign to any normative order; defying the rationalising objective of *juristic sovereignty* as well as the democratic objective of *popular sovereignty*. Schmitt’s own political theory endorses the notion of sovereignty as supralegality. Giving supralegality a higher type of legality allows Schmitt to suspend the normal routine of law that is a foundation of modern constitutionalism. Legitimacy is thus subordinated to the decision, expressed by Schmitt in terms of the counter-revolutionary outlook in which the decision is heightened “to such

¹²² *Ibid.*, p. 65.

¹²³ *Ibid.*

¹²⁴ *Ibid.*, p. 65.

¹²⁵ *Ibid.*

an extent that the notion of legitimacy, their starting point, was finally dissolved.”¹²⁶ Sovereignty does not need to answer the question of legitimacy, to do so would be to undermine the very foundations of sovereignty. Sovereignty is understood theistically by Schmitt, as the ability to exercise absolute dominion and mastery in the domain of the political without the need for justification through a public and/or rational vocabulary.

Expressing sovereignty in terms of the political theology of the exception involves the downgrading of the friend-and-enemy distinction as a central component of the political. Sovereignty is thereby mastery and dominion at a higher level than that provided for in Schmitt’s friend-and-enemy grouping. Sovereignty is best expressed as *Theopolitik* rather than *Realpolitik*, dependent upon the covert operation of the decision rather than public agreement on what constitutes the decision. Schmitt sees value in de Maistre’s presentation of the reason of state as the decision. According to Schmitt this embodies a “pure decision not based on reason and discussion and not justifying itself, that is, to an absolute decision created out of nothingness.”¹²⁷ If the decision is forced to operate in terms of a discourse of legitimacy, whether juristically or popularly, then its ability to decide is severely curtailed. Dictatorship rather than legitimacy is thus the working practice of Schmitt’s concept of sovereignty; resolutely opposed to innovation in terms of what constitutes the sovereign and, more critically, unwilling to imagine alternative relations of mastery and dominion.

4.5 The Democratic Consequences of Sovereignty

Schmitt directs his attention to the conflict between parliamentarism and democracy in his 1926 text, *The Crisis of Parliamentary Democracy*. Schmitt seeks to demonstrate why the liberal model of parliamentary politics provides an insufficient foundation for democratic politics. The widely held belief that democracy is best realised within the framework of parliamentary process is radically contested by Schmitt. Schmitt argues that the development of modern mass democracy has made argumentative public

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*, p. 66.

discussion an ‘empty formality’ within parliamentary process.¹²⁸ Democratic government under a parliamentary system is understood by Schmitt as the “wonderful coordination” of appearance and reality.¹²⁹ This distrust of the parliamentary method involves Schmitt denouncing parliamentarism as the procedural embodiment of democratic principles; parliamentarism belongs to liberalism *not* democracy.

Schmitt argues that a “democracy demonstrates its political power by knowing how to refuse or keep at bay something foreign and unequal that threatens its homogeneity.”¹³⁰ Endorsing the Hellenic view of democracy, Schmitt thinks that a democracy can legitimately exclude one part of the governed without ceasing to be democratic.¹³¹ Inequality is a function of political community; a political community can only become homogenous if it is willing to differentiate between different classes of persons. Schmitt wants democracy to be organised so that *equals* are treated equally and *unequals* are treated unequally. Democracy requires homogeneity and the eradication of heterogeneity. Equality, paradoxically, must be constructed hierarchically. Equality must be understood not in terms of its horizontal potential but its vertical potential; or, as expressed by Schmitt himself, equality is a substantial quality for those adults within a “circle of equals.”¹³² Rights and immunities accrue only to those who are worthy of being included in this circle. Eligibility for this “circle of equals” occurs on the basis of the capacity of subjects to live up to the ideal of national homogeneity considered necessary by Schmitt.

Schmitt ridicules the liberal model of political participation, in which each adult person is accorded an equal value in terms of participation. In opting for equal representation and voice for every adult person, the liberal neglects considerations of what Schmitt terms ‘substantial equality’ and ‘homogeneity.’¹³³ Schmitt thinks that the term equality, especially within liberal discourse, should only be reserved for those persons who are substantively equal. To grant universal suffrage, beyond a circle of equals, robs equality

¹²⁸ Carl Schmitt, *Crisis of Parliamentary Democracy*, p. 6.

¹²⁹ *Ibid.*, p. 8.

¹³⁰ *Ibid.*, p. 9.

¹³¹ *Ibid.*, p. 9.

¹³² *Ibid.*, p. 10.

¹³³ *Ibid.*, p. 11.

of its very value. Schmitt thinks of equality as having distinct spheres; the distinction between *equals* and *unequals* gives these different spheres its particular meanings. This leads Schmitt to claim that “[h]owever great an injustice it would be not to respect the human worth of every individual, it would nevertheless be an irresponsible stupidity, leading to worst chaos, and therefore to even worse injustice, if the specific characteristics of various spheres were not recognized.”¹³⁴ Schmitt’s desire to keep each sphere separate – to ensure that *unequals* are hierarchically rather than horizontally placed – is an example of the autonomous method at work throughout his legal and political theory. Within each sphere there are clear relationships of power that correlate to these implicit status hierarchies; only certain actors or agents are called to action within each of the spheres. The liberal belief in practical equality is thereby rejected as “practically meaningless” by Schmitt. This is because equality requires that some people be unequal.¹³⁵

Flattening power relationships to establish horizontal equality is not a prerequisite for democracy according to Schmitt. Rousseau is wrong in placing two divergent traditions – democracy and liberalism – alongside each other.¹³⁶ Schmitt consequently argues against the social contract. The social contract is a façade; it assumes that state legitimacy is achieved through free contract amongst persons who are deemed to be equal. Schmitt does not assess political institutions in terms of legitimacy but, as was established above, in terms of its capacity to bring about the decision. A contract cannot establish the conditions for political community; the general will is realisable through sovereignty not parliamentary procedures. Rousseau’s social contract is little more than a theoretic device designed to mask the actual divisions within a given political community. Accordingly, Schmitt claims that “[w]here it exists a contract is meaningless. Where it does not exist, a contract does not help. The idea of a free contract of all with all comes from a completely different theoretical world where opposing interests, differences, and egoisms are assumed.”¹³⁷ The state is the product of sovereignty, not the artefact of a contract.

¹³⁴ *Ibid.*, p. 11.

¹³⁵ *Ibid.*, p. 12.

¹³⁶ *Ibid.*, p. 13.

¹³⁷ *Ibid.*, p. 14.

Thus, liberalism and democracy belong to separate spheres. Democracy demands substantive equality that is only achievable through a homogenous political community; parliamentarism, as the institutional practice of liberal politics, demands the equality of *mankind*. Democracy involves the articulation of a 'democratic identity' so that the political community can confront the supreme emergency with unanimity of voice rather than being undermined by the internal divisions associated with the party politics of parliamentarism. A political community constituted through difference is incapable of coming to operate decisively, an important consideration of the concept of the political. Terrifyingly, Schmitt claims that quality of democracy can be improved through the use of Caesaristic methods rather than what he calls the 'artificial machinery' of parliamentarism.¹³⁸ "The stronger the power of democratic feeling, the more certain is awareness that democracy is something other than a registration system for secret ballots."¹³⁹ Caesaristic methods, involving the use of acclamation, are considered to be a "direct expression of democratic substance and power."¹⁴⁰

Modern political systems are beleaguered by three crises according to Schmitt: a crisis in democracy; a crisis in the modern state; and a crisis in parliamentarism.¹⁴¹ The crisis in democracy can be interpreted as the problem of homogeneity: how can contemporary states achieve homogeneity against a backdrop of diversity and difference? The crisis in the modern state is associated with the success of the state in modern politics: is a democracy of *mankind* truly possible? The crisis in parliamentarism can be regarded as a question of 'quality control': how is the quality of the political community endangered by the empty and endless talk of parliamentary process? The value that Schmitt wishes to defend, in his identification of these three crises, is that democracy needs to be constituted through and amongst equals. The value of democracy is its capacity to bind like persons together in the state; a democracy of unlike persons is politically impossible

¹³⁸ *Ibid.*, p. 17.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*, p. 17.

¹⁴¹ *Ibid.*

since it disturbs the ideal of homogeneity that is, in Schmitt's schema, necessary for democratic functioning.

Schmitt's critique of parliamentarism stems from the fact that the parliamentary method pays little heed to the political theology of the exception and, in so doing, is unable to act heroically when confronted with the supreme emergency. For Schmitt, parliamentarism deludes itself into thinking that it can tackle, through parliamentary process, morally serious questions concerning the structure of order in society, law, and politics. The radical uncertainty of the Weimar Republic is taken by Schmitt to signal the poverty of parliamentarism. The dominance of political parties means that those who are *truly* in a position to judge are not enabled to judge. The politics of personality means that the significant questions of the political (friend and enemy) are only of tangential significance in the public sphere. Government by amateurs, rather than those skilled in the technologies of power and administration, means that governments are weak when faced with crisis and emergency.¹⁴²

Schmitt has little faith in the capacity of procedural norms to generate the decision. The epistemological force of Schmitt's concept of sovereignty is the moment of the decision. "It belongs to the essence of democracy," Schmitt declares, "that every and all decisions which are taken are only valid for those who themselves decide."¹⁴³ The parliamentary model of democracy proposes the extension of individual rights within the modern state. Schmitt thinks that this extension of rights overlooks the fact that not every citizen is enabled to make decisions, not every citizen is called to politics. This means that dictatorship is not necessarily incompatible or antithetical to democracy.¹⁴⁴ Schmitt rejects a Jeffersonian account of democracy; democracy is not the will of the people (popular sovereignty) but the ability of a people to be constituted *politically* as a people. Democracy is the constituting of a people not government by the people. Schmitt deems parliamentarism unfit for the task of constituting the people, primarily because its

¹⁴² *Ibid.*, pp. 19-20.

¹⁴³ *Ibid.*, p. 27.

¹⁴⁴ *Ibid.*, p. 28.

endorsement of pluralism involves the abandonment of unanimity – an essential requirement of the decision.

Schmitt also regards parliamentarism as weak on the question of political order. Parliamentarism functions in terms of fragmented, overlapping forms of reason. Under parliamentarism “particles of reason” are scattered across the public sphere; there is no ordering principle to ensure that these “particles of reason” can become a conceptual whole.¹⁴⁵ Democracy needs an authoritative tribunal of reason, answerable only to itself. A true democracy has no space for rival or overlapping accounts of reason. Parliamentarism, as both a metaphysical system and a system of government, is predicated on value incommensurability. Viewed from Schmittian ethics parliamentarism is unable to reconcile these rival value claims. When decisive adjudication is required parliamentarianism can only partake in what Schmitt terms ‘eternal discussion.’¹⁴⁶ Discussion is no substitute for the decisive work of sovereignty within the polity. *Autoritas, non Veritas facit Legem.*

A requirement of Schmitt’s account of democracy is the authoritative distribution of decisions; these decisions are imparted to a people through the sovereign and are not generated juristically or popularly. Schmittian democracy intentionally omits deliberative mechanisms for decision-making. The adjudication of incommensurable value claims are to be managed extra-legally by the sovereign. Schmitt reprimands Locke for thinking that discussion can take the place of force within a polity.¹⁴⁷ A society of beasts, hints Schmitt, cannot be regulated through the force of conversation but requires the use of direct force itself. Parliamentarism attempts to adjudicate by thinking that the force of the better argument *can* and *will* prevail within the public sphere. Schmitt thinks parliamentarism incapable of adjudication and thereby unable to escape the factionalism of party politics. Neutral adjudication can never be accomplished through parliamentary norms and this leads to an inherent paradox (or tragedy) within parliamentarism:

¹⁴⁵ *Ibid.*, p. 35.

¹⁴⁶ *Ibid.*, p. 36.

¹⁴⁷ *Ibid.*, p. 49.

reconciling rival value claims through parliament would involve invalidating the implicit commitment to pluralism in parliamentarism.

Schmitt attacks the thin notion of publicity that exists within parliamentarism. For parliamentarism to perform its work requires a strong public sphere where subjects can voice their interests publicly and without coercion. Schmitt argues, nonetheless, that this criteria of publicity has been steadily eroded by political parties as well as the committee system.¹⁴⁸ Parliament has lost its foundation in publicity and has become, in Schmitt's words, a mere "façade."¹⁴⁹ The machinery of parliamentary politics – freedom of speech, assembly, and the press – no longer exists, calling into question the very viability of parliamentary norms. The rationale for parliamentarism, as a limiting discourse to political power, is subsequently eroded. Parliamentarism institutes checks and balance in the name of political accountability; yet these same checks and balances do not accurately reflect the life of power that emerges through parliamentarism. This power is secretive, closed, and weakened by factionalism.

Schmitt derides those who believe that "just laws and the right politics can be achieved through newspaper articles, speeches at demonstrations, and parliamentary debates."¹⁵⁰ Thinking that the political decision can be achieved by instituting an 'unending conversation' is the delusion of the romantic. This view of democracy was feasible when the polity could "gather under the village tree" but, given the complex constraints of modernity, is now practically impossible.¹⁵¹ Parliamentarism attempts to establish a deliberative process that will recover the democratic intimacy attributed to the Hellenic *polis*. No such intimacy is possible according to Schmitt. "The essence of parliament," Schmitt notes, "is therefore public deliberation of argument and counterargument, public debate and public discussion, parley, and all this without taking democracy into account."¹⁵² Democracy and parliamentarism occupy different metaphysical realms because they work from divergent conceptions of political order. The political order

¹⁴⁸ *Ibid.*, p. 49.

¹⁴⁹ *Ibid.*, p. 49.

¹⁵⁰ *Ibid.*, p. 50.

¹⁵¹ *Ibid.*, p. 34,

¹⁵² *Ibid.*, pp. 34-35.

imagined by parliamentarism is dependent upon the reconciliation of dissimilar elements within the polity so as to achieve a conceptual whole. The *ratio* of parliamentarism, Schmitt remarks, is a “dynamic-dialectic” in which differences in opinions are confronted through the public sphere. Schmitt invokes Guizot in demonstrating that this *ratio* is reliant upon the following three tenets: (a) truth is established through discussion; (b) the openness of political life means that citizens are in control of this discussion; (c) press freedom enables citizens to allow their voices to be heard in this discussion.¹⁵³

Parliamentarism belongs to liberalism because it treats political truth as the upshot of spontaneous, free, and open discussion. The same ordering principles drive economic liberalism that drive parliamentarism. According to Schmitt, both these metaphysical systems advance the notion that “the truth can be found through an unrestrained clash of opinion and the competition will produce harmony.”¹⁵⁴ Democracy, contrastingly, depends on the capacity of a community to constitute itself *politically*. Expressed in tabloid form, a political community is enabled when it can differentiate, as Schmitt notes in *The Concept of the Political*, friends from its enemies. Schmitt’s democratic model stresses absolute solidarity amongst political subjects, giving rise to an extreme form of identity politics in which there is little, if any, space for difference within the polity. Schmitt’s perverse notion of solidarity stresses the homogeneity of political order. Parliamentarism, in opting for more open forms of identification, recoils from the decisiveness of political order. In the parliamentary system the “eternal competition of opinions” endangers a “definite result” when dealing with concepts of truth.¹⁵⁵

Schmitt’s reading of parliamentarism challenges fundamental precepts of liberal thought, especially its assumption that all should be treated equally. “It is essential,” Schmitt notes, “that liberalism be understood as a consistent, comprehensive metaphysical system.”¹⁵⁶ This liberal metaphysic can be reflected in the following characteristics of parliamentary practice: (a) a belief in openness; (b) respect for the balance of powers; (c) law and

¹⁵³ I have slightly modified Schmitt’s presentation of Guizot to allow for the emphasis on ‘discussion’ to emerge more strongly. *Ibid.*, p. 35.

¹⁵⁴ *Ibid.*, p. 35.

¹⁵⁵ *Ibid.*, p. 35.

¹⁵⁶ *Ibid.*, p. 35.

legislation curtails the powers of the political community; (d) parliament enacts legislation; and (e) discussion provides the means for resolving differences in opinion. Parliamentaryism spurns cabinet politics, turning sovereignty into a popular norm rather than an executive norm. “The elimination of secret politics and secret diplomacy,” Schmitt declares, “becomes a wonder cure for every kind of political disease and corruption, and public opinion becomes a totally effective controlling force.”¹⁵⁷ The requirement of openness is also bound up in the Enlightenment rejection of despotism. When the door opens, reason is illuminated. Openness is an ‘absolute value’ of parliamentarism according to Schmitt because it was the means by which the institutional abuses of the *anciens regime* could be challenged. Schmitt, unsurprisingly, does not endorse the radical publicity contained within this account of political reason. Radical publicity disembodies the political community, releasing it from its role as authoritative decision-maker.

Sovereignty, keeping in mind Schmitt’s decisionism, is the embodiment of the decision. The sovereignty that has to excuse or defend itself before the court of public opinion is not an authentically sovereign sovereignty. Pooling or sharing sovereignty within and across the state disables the capacity of the state to decide; pooling or sharing sovereignty between and above states endangers the very notion of sovereignty itself. Sovereignty cannot be answerable to reason since this overlooks the fact that history is a dialectical process of struggle. This struggle cannot be contained in a bubble of reason and rationality since “it emerges from a state of war between those who are inspired by great mythical images to join battle.”¹⁵⁸ History is formed through an “irrational life energy”; to believe in rationality is to “falsify the immediacy of life.”¹⁵⁹ Schmitt is concerned that liberalism, involving a cacophony of voices, will jeopardise prospects for unity within the polity. “The last remnants of solidarity and a feeling of belonging together,” Schmitt notes, “will be destroyed in the pluralism of an unforeseeable number of myths.”¹⁶⁰ Schmitt looks to Mussolini to demonstrate how the irrational can achieve rational

¹⁵⁷ *Ibid.*, p. 38.

¹⁵⁸ *Ibid.*, p. 69.

¹⁵⁹ *Ibid.*, p. 71.

¹⁶⁰ *Ibid.*, p. 76.

outcomes in politics: “We have created a myth, this myth is a belief, a noble enthusiasm; it does not need to be a reality, it is a striving and a hope, belief and courage.”¹⁶¹

Schmitt treats dictatorship and historical development as mutually exclusive. The revolutionary moment is not generated spontaneously from within a people; the revolutionary moment is the product of strong leaders bold enough to author a new world spirit or *Weltgeist*. “The *Weltgeist*,” Schmitt contends, “only manifests itself in a few minds at any stage of its development.”¹⁶² The “world-historical personality” is an important element of history-making. Marxism is correct in emphasising the way in which history is created through vanguards: “This vanguard does not wish to escape from the immanence of world-historical evolution at all,” he claims, “but is, according to the vulgar image, the midwife of coming things.”¹⁶³ But Schmitt thinks that reason will always be weaker than unreason when trying to account for the evolution of the *Weltgeist*. The rationalising trajectory of Marxism is no rival for philosophy borne out of “irrational life energy.”

Schmitt’s emphasis on the irrationality of political life has important consequences for the rationalising ontologies of both liberalism and Marxism. The liberal account of reason depends on the capacity of the conscious to subdue the unconscious. This is reflected in the liberal belief that open, free discussion will enable reason to triumph over unreason. John Stuart Mill expresses this in *On Liberty* when he claims that if “an opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.”¹⁶⁴ Whilst Schmitt readily accepts the dialectical reasoning of Marx – where friend and enemy engage in concrete battle – he nonetheless refuses to endorse the scientific-political project contained therein. Schmitt is adamant that historical evolution is not the product of science, but determined through world-historical leadership. Mastery and dominion are necessary components of this historical

¹⁶¹ *Ibid.*, p. 76.

¹⁶² *Ibid.*, p. 58.

¹⁶³ *Ibid.*, p. 58.

¹⁶⁴ John Stuart Mill, ‘On Liberty,’ in John Gray (ed.), *On Liberty and Other Essays*, (Oxford: Oxford University Press, 1998), p. 85.

process; neither Marxist science nor liberal discussion can provide the sovereign an authoritative structure for decision. Both neglect the imperative of mastery and dominion in the domain of the political.

Schmitt provides little space for democratic deliberation in his absolute account of sovereignty. This absolutism stresses foremost the priority of the exception above the norm, rejecting procedural conceptions of political order. The emphasis on the political theology stems from the fact that conditions by which the exception emerge are inherently unknowable, defined theistically rather than objectively. Schmitt's reading of democracy stresses the importance of the exception above the everyday politics of parliamentarism. Sovereignty is an act of faith, rather than a value of juristic sovereignty and/or popular sovereignty. Yet Schmitt does offer a normative account of democracy, associating democracy with the decision rather than deliberative forms of participation. The *telos* of his democratic system is homogeneity. The eradication of difference becomes the governing norm of political community, opposed to all other norms in political thought. Schmitt forces a choice between homogeneity and all other normative values: Homogeneity *or* justice? Homogeneity *or* rights? Homogeneity *or* freedom? Homogeneity *or* equality? The following chapter examines how this normative coding results in an extreme reason of state, reliant on Hobbes but without the inherent awareness that the state is the product of contract.

5

The Schmittian ethic of state

5.1 Schmitt's theory of the state

The dominant theme of the current work concerns the normative reordering of the political, especially in relation to the capacity of political subjects to engage productively within and beyond the boundaries of the political. This chapter seeks to come to terms with the horizon of ethics in Schmitt's theory of the state. We do not normally think of Carl Schmitt as a thinker for whom 'ethics' assumes critical importance. Speaking in terms of 'ethics' and, more specifically, the Schmittian ethic of state, means that the normative project of Schmitt's theory of the state is rendered visible. It is no secret that Schmitt cast a suspicious gaze on those who would seek to reformulate the political according to a prior norm, moral, or ethic. The only viable ethic of state is that which consolidates the technology of state power, principally by implementing the Hobbesian relation between protection and obedience. This theory of the state presents a juridical analysis of the origins, processes and ends of state power. In this respect, Schmitt is concerned with the prohibitive and repressive dimensions of state power: how does power say no? This understanding of state power, indebted to the Hobbesian political dialectic, prematurely forecloses the domain of the political. Schmitt's theory of the state narrows the potential of state power, turning citizens into docile subjects.

The central dilemma of the Schmittian ethic of state concerns the incongruity between his ontological constructivism and political essentialism. Schmitt's legal positivism emphasises the production of legality against a backdrop of competing power relations. Legality becomes the chance to compel obedience (see Chapter 6) and, accordingly, political right derives from the ability of the *magnus homo* to create the conditions for political homogeneity. In this respect, the chance to compel obedience does not depend on a prior account of political right. Right is might, or, as shall be discussed in relation to the state theory of Thomas Hobbes, *Auctoritas, Non Veritas*. What is of concern is that Schmitt accepts the constructivist premise of legal positivism but is unable to accept the

constructivist conclusion; namely, if political right is the consequence of shifting relations of power then its authoritative claim is always provisional, subject to contestation. This reveals a primary weakness in the Schmittian ethic of state: how is it possible to be constructivist in accounting for the origins of the modern state whilst, at the same time, being essentialist in terms of the effects of the state?

The Schmittian ethic is illustrative of the *partial modernity* working throughout Schmitt's political and legal theory. Schmitt is brazenly modern when it comes to addressing the technology of power; how power is put together through the state. At the same time, Schmitt is stubbornly pre-modern when tackling the question of mastery and dominion within the state; power is pure command. This makes Schmitt's reading of Hobbes extremely problematic and, in asking whether Schmitt is a friend and enemy of Hobbes, my intention is to highlight how Schmitt's mechanic of state is modern whilst the ethic of state is distinctly pre-modern. These observations echo those made in relation to Schmitt's *Political Theology* in which power and right are bound up in the miracle. Having revealed the contradiction between constructivism and essentialism, modernity and pre-modernity, then a new space for ethical discussion is opened up. The Schmittian ethic of state is between two worlds, methodologically and temporally. The purpose of this chapter is to bring these two worlds into focus and, in so doing, provide a basis for rethinking the state along constructivist lines without the dangers of Schmittian political essentialism.

5.2 Schmitt: Friend or Enemy of Hobbes?

"Thomas Hobbes, now you do not teach in vain!" Schmitt declares in the concluding paragraph of *The Leviathan in the State Theory of Thomas Hobbes*.¹ Having examined Schmitt's autonomous concept of the political in Chapter 3, the current objective is to come to terms with the legacy of Thomas Hobbes in his theory of the state. The purpose of this investigation is to understand how the Schmittian account of the political, resting upon an existential claim concerning the productivity of binaries in human thought, is

¹ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, (Westport: Greenwood Press, 1996), p. 86.

indebted to the intellectual *habitus* of Thomas Hobbes. In talking in terms of *habitus* rather than *legacy* the intention is to underscore the ways in which Schmitt generates the Hobbesian motif in his thought. In so doing, it is argued, he constructs a spectre of Hobbes rather than Hobbes himself. Schmitt does not co-opt Hobbes in an uncritical, reiterative sense. On the contrary, Schmitt acknowledges that the Hobbesian theory of the state, with its image of the leviathan at the fore, has become “more like a mythical symbol fraught with inscrutable meaning.”² In light of this inscrutability – meaning that there is no single, authoritative reading of Hobbes – it is necessary to evaluate how Schmitt constructs the Hobbesian account of order.

Readings (and re-readings) of Thomas Hobbes constitute an entire sub-field within the disciplines of philosophy, history, political theory and political thought. “We do well to be afraid of Hobbes,” C. B. Macpherson famously pronounces, “he knows too much about us.”³ Despite Macpherson’s critique of the Hobbesian story of possessive individualism he nonetheless clings to the belief that Hobbes possessed privileged access to the ontology of human nature. The following discussion of Hobbes and Schmitt rejects this ontological approach. It develops an understanding of Hobbes which is more concerned with the rhetorics of political communication rather than the scientific foundations of Hobbesian thought.⁴ Talking in terms of rhetorics allows for a focus in keeping with the constitutive approach developed throughout the main body of the current work. It supports A. E. Taylor’s and Howard Warrender’s reading of *Leviathan* in claiming that Hobbes did not succeed in constructing systematic philosophy based on motion. Taylor has claimed that *Leviathan* was rhetorical and aimed at the “average, well-educated Englishman.”⁵ Taylor disputes the necessity of accepting the egoistic moral psychology of Hobbes on the basis of his scientific system.⁶ In a similar vein, Leo Strauss also rejects the systematic philosophy of Hobbes arguing that a mechanistic

² *Ibid.*, p. 5.

³ Crawford B. Macpherson, ‘Hobbes’s Bourgeois Man,’ in K Brown (ed.), *Hobbes Studies*, (Oxford: Oxford University Press, 1965), p. 171.

⁴ In this vein see Gary Shapiro, ‘Reading and Writing in the Text of Hobbes’s *Leviathan*,’ *History of Philosophy*, 18 (1980), pp. 147-157.

⁵ As cited in Robert Gray, ‘Hobbes’ System and his Early Philosophical Views,’ *Journal of the History of Ideas*, Vol. 39, No. 2. (Apr. - Jun., 1978), p. 201.

⁶ *Ibid.*

treatment of the human passions is of little interest to moral philosophy.⁷ Taken together, the deductive reasoning of Hobbes (mechanistic in its outlook) is not essential to come to terms with the ethical reasoning of Hobbes (which is vitalistic to its core).⁸ Schmitt's reading of *Leviathan* is more concerned with the vitalistic reasoning of Hobbes than its mechanistic, scientific guise.

The relationship between the vitalistic and the mechanistic is critical in understanding Schmitt's reading of *Leviathan*. Schmitt pays little heed to Hobbesian naturalism, endorsing, largely by omission, the Straussian view that humanism is at the centre of *Leviathan*.⁹ Strauss thereby inverts traditional readings of Hobbes in which natural science directs the passions and appetites. The cause of being is bound up in experience as it is lived (ontology) rather than through the discovery of lawlike processes through the scientific method (epistemology). In this respect, Schmitt is more concerned with the ontological project of *Leviathan*. Casting *Leviathan* in terms of metaphysics Schmitt becomes fixated with the vitalistic element of Hobbesian cosmology.¹⁰ "In the long history of political theories," Schmitt notes, "a history exceedingly rich in colourful images and symbols, icons and idols, paradigms and phantasms, emblems and allegories, this leviathan is the strongest and most powerful image."¹¹ Schmitt is more interested in the capacity of political myth to generate an authoritative structure for decision-making than in the Hobbesian taxonomy of the appetites and passions.

Schmitt's opening analysis of *Leviathan* concerns the different understandings of leviathan in Christian and Judaic thought; preferring to emphasise differences in the

⁷ *Ibid.*

⁸ Leo Strauss, for example, argues that Hobbes has two conceptions of the human appetites which are largely inconsistent: mechanistic and vitalistic. The mechanistic aims at the discovery of lawlike processes of human nature and is thereby associated with that of naturalism. The vitalistic builds its insights into human nature through the process of self-knowledge and self-examination. See *Ibid.*, p. 205.

⁹ See Gray for an excellent summary of the Straussian interpretation of Hobbesian naturalism *versus* humanism. He argues that "[t]he claim that all mutation is motion or that the principles of natural science are contained in the nature and variety of motion . . . is a claim belonging to first philosophy or metaphysics." *Ibid.*, p. 208.

¹⁰ Fred Dallmayr has drawn attention to the overlap between Hobbesian cosmology and modern existentialism. See Fred Dallmayr, 'Hobbes and Existentialism: Some Affinities,' *The Journal of Politics*, Vol. 31, No. 3. (Aug., 1969), pp. 615-640.

¹¹ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 5.

image across theological traditions than in the scientific grounds of the Hobbesian theory of political motion. In focussing on symbolization, to the detriment of epistemological investigation, Schmitt brings a romantic sensibility to Hobbes's classic text. This romantic sensibility, despite his rejection of the poeticization of political life in *Political Romanticism*, wants to stress the ways in which symbols create political order: *the more powerful the symbol, the more terrifying its landscape of violence, the more mysterious its form, then the greater role that this symbol will play in establishing a system of political order*. This symbol of the leviathan, Schmitt remarks, "shatters the framework of every conceivable theory or construct."¹²

The capacity of the leviathan symbol to shatter established understandings of politics, law, and sovereignty is closely connected with Schmitt's endorsement of the vitalistic Hobbes. *Leviathan* depicts the spirit of Schmittian political ethics, embedded, unremarkably, in the friend-enemy distinction. "The political battle," he notes, "with its inevitable and incessant friend-enemy disputes that embrace every sphere of human activity, brings to the fore on both sides specific weapons."¹³ Schmitt is at home in the Hobbesian state of nature owing to the fact that it encapsulates the existential grouping of friend-enemy that he confers on the political.

5.3 *Leviathan* and the problem of political order

So what does Schmitt mean by leviathan? And, more decisively, why does Schmitt read *Leviathan* in terms of the symbolic structuring of state form rather than the epistemological grounds of state form itself? That is to say, the focal point of Schmitt's discussion of *Leviathan* is the strategic role that political myth plays in establishing conditions of political right. Ideas and distinctions are, in Schmitt's worldview, 'political weapons.'¹⁴ This means that words assume a decisive role in the making of Schmittian political community. Words become part of the systematic construction of the leviathan rather than a descriptor of eternal truths concerning the foundations of Hobbesian

¹² *Ibid.*, p. 5.

¹³ *Ibid.*, p. 18.

¹⁴ *Ibid.*

political order. In linking *image* to *form* the leviathan becomes representative of political order but, owing to Schmitt's nominalism, *image* does not mimic reality.¹⁵

Schmitt associates leviathan with the creation of an order – *civitas* and *res publica* – that will allow for the emergence of political right. The leviathan is therefore a political imaginary; it exists for the generalisation of political right, but does not constitute political right in itself. Leviathan is simultaneously soul, person, and machine according to Schmitt. He expresses this imaginary as “a huge man, a huge leviathan, an artificial being, an *animal artificiale*, an *automaton*, or a *machina*.”¹⁶ These images derive their forcefulness from an indirect power and, by nature, cannot be measured, contained, or quantified. Their indirectness establishes their very authoritativeness. It is not surprising that Schmitt looks upon the leviathan as the exemplar of sovereign, stately form. A universal theme of Schmitt's legal and political theory concerns the destruction of the miracle from life under the forces of modernity. The leviathan sits comfortably with Schmitt's yearning for political order that escapes constitutional and/or legislative codification. The leviathan may be instituted according to the logic of the contract but, ultimately, in Schmittian legal ethics the contract dissolves under the force of real life. This is because, as was argued in the opening chapter, the political proves itself in the exception. The ‘full force’ of the political emerges in that moment when norms are cast aside for the sake of a higher legal order. Schmitt terms this higher legal order ‘supralegality’ (see Chapter 6) and it is linked to a heavily theologised account of sovereignty (see Chapter 4).

Schmitt seeks to highlight the ‘plasticity’ of the leviathan form, documenting its pre-Hobbesian history in detail. Schmitt's primary focus concerns the transition of the leviathan away from a medieval image symbolising the demonic to its emergence as the pre-eminent metaphor of state form and state authority under modernity. Hobbes is a key

¹⁵ In suggesting that *image* is representative of political *form* it should be noted that this representation is not final or definitive. Owing to the fact that the leviathan, as a metaphor, can be deployed strategically in the name of political order this means that the representation is always provisional. *Mimesis*, the direct correlation between word and object, is not possible since leviathan is foremost a political myth in the service of political order.

¹⁶ *Ibid.*, p. 19.

figure behind this transition.¹⁷ Related to the fact that the leviathan takes different form, across historical and theological space, is Schmitt's acknowledgement that the leviathan is a constructed (and thereby artificial) form. In this respect Schmitt affirms that the person of the state imagined by Hobbes is the outcome of a contingent lifeworld; in taking a stately form through the power of metaphor the leviathan is, to its very core, *homo artificialis*.¹⁸ Quentin Skinner is insightful on this question of how the state assumes the status of 'person' in Hobbesian thought. This person is an *artificial person* and, by virtue of this, raises foundational questions concerning the origin of sovereignty. As Skinner asks, "[h]ow can such a seemingly insubstantial person be the holder of sovereignty and the seat of power?"¹⁹

Schmitt's answer to this question is to accent how the leviathan exists in terms of an image of an artificially constituted, 'huge man.' The 'huge man' operates in terms of a representative device. It does not exist, or need to exist, at the level of an 'objective reality.' This is related to the Hobbesian conception of a person, defined by Hobbes in the *Leviathan* in the following way:

A PERSON, is he, whose words or actions are considered, either as his own, or as representing the words or actions of an other, or of any other thing to whom they are attributed, whether Truly or by Fiction.²⁰

What is significant about the Hobbesian account of the person is that it results in the following two conditions: (a) a person can be constituted simultaneously through regimes of truth and/or regimes of fiction; and (b) the ontological status of a person depends less on objective conditions of truth but is formed pragmatically in the process of representing words and actions. When extended to the personality of the state, as Hobbes does in

¹⁷ See where Schmitt argues that "the essentially demonic content of the image vanishes between 1500 and 1600. The popular medieval belief in demons, which was still alive in Luther, disappears; the veil spirits change into grotesque or even humorous ghosts. The image of the leviathan experienced a similar fate in the literature of the devil or the demons from the time of Hieronymus Bosch until the so called hell of Bruegel." *Ibid.*, p. 24.

¹⁸ *Ibid.*, p. 34.

¹⁹ Quentin Skinner, 'Hobbes and the Purely Artificial Person of the State,' *The Journal of Political Philosophy*, Vol. 7, No. 1, 1999, p. 18.

²⁰ Thomas Hobbes, *Leviathan*, Richard Tuck (ed.), (Cambridge: Cambridge University Press, 1996), p. 111.

Chapter XVI of *Leviathan*, then the state publicly represents the multitude of persons. “The public acts of sovereigns,” Skinner notes, “will count as valid acts of the state if and only if the sovereign has been authorised to perform them by each and every member of the multitude.”²¹ This leads Hobbes to endorse the covenant as the preferred method of securing “Peace and Common Defence” in the state of nature.²²

Authorisation, the process of endowing covenant with the status of political right, is therefore critical for Hobbes. Skinner asks the following question: “Who then is capable of authorising the actions of the state?”²³ He answers this by establishing two requirements that Hobbes gives in relation to the sovereign:

One is that the natural person or persons authorising the representation must themselves possess the right to undertake whatever actions they intend to authorise. The other is that this right must in turn be owed to the fact that they stand in some appropriate relationship of dominion over the purely artificial person concerned.²⁴

Skinner also notes that for Hobbes the formation of the state is a *procreative* act: “Just as the mother brings her child into the world, thereby acquiring dominion over it, so the union of the multitude serves to procreate the state.”²⁵ The reading given by Skinner differs radically from Schmitt in terms of the process of authorisation. Skinner emphasises, quite rightly, the problematic relationship between the multitude and the creation of a discourse of dominion. Schmitt, true to his decisionism, regards the multitude as secondary to the sovereign.²⁶ Inspired by the vitality of the exception, Schmitt overlooks the problem of forming the covenant and focuses on the political

²¹ Quentin Skinner, *op. cit.*, pp. 22-23.

²² *Ibid.*, p. 23.

²³ *Ibid.*, p. 22.

²⁴ *Ibid.*

²⁵ *Ibid.*, p. 23.

²⁶ Skinner offers a more sensitive reading of the ethical dilemma of *Leviathan* compared to Schmitt. An impressive feature of his discussion of the artificial personality of the state is that he sees beyond the legalism many associate with the social contract tradition. Skinner argues that Hobbes’s “account of attributed action already enables him to rest his case against the radical writers of his age. The concept of the political covenant is not a means of limiting the powers of the crown; properly understood, it shows that the powers of the crown have no limits at all. The theory of attributed action lies at the heart of the politics of *Leviathan*.” *Ibid.*, p. 27.

effects of the covenant: namely, the creation of an authority that, once established artificially, need not revisit the initial question of origins. Schmitt is therefore more interested in the effects of sovereign power rather than the production of the sovereign power itself.

This can be demonstrated in the miraculous account of Hobbesian reason (*ratio*) put forward by Schmitt. In accounting for the transition from stateless form to stately form, Schmitt's language reinforces the role of the miracle in building political community. "The terror of the state of nature," Schmitt describes, "drives anguished individuals to come together; their fear rises to an extreme; a spark of reason (*ratio*) flashes, and suddenly there stands in front of them a new god."²⁷ In suggesting that Hobbesian reason is akin to a 'spark' there is little consideration of the taxonomy of the passions developed by Hobbes; reason becomes a freak event of worldly experience, a kind of shock therapy for the pre-political subject. Schmitt is more interested in the appearance of the new god – *deus mortalis* – than its foundational grounding in the human passions and appetites. This focus neglects the methodological project of *Leviathan*, especially in relation to Hobbes's desire to come to terms with the constitutional physic of humankind.²⁸

5.4 Schmitt's miraculous theory of the state

Schmitt is convinced that political reason derives its reasonableness from the irrationalism of the miracle. Although Schmitt does not specifically use the term "irrationalism" it is evident that the transition from the stateless condition to the stately condition depends on the impulsive surrendering of interests by individual subjects. It takes a condition of radical normlessness for the subject to realise the ontological error of her or his unbridled appetites. But this realisation is not couched in terms of mutual aid or enlarging the value of the commonweal; rather, Schmitt's focus is on how 'reason' is attained against all odds. It is important to note that Schmitt accords priority to the 'spark of reason' before

²⁷ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 31.

²⁸ See Albert O. Hirschman who notes that Hobbes, drawing inspiration from Galileo, sought to describe man (sic) as "he really is." Hirschman credits Hobbes with the development of a new ethic related to the individual. Discussing Hobbes, Hirschman notes that "[t]he advances of mathematics and celestial mechanics held out the hope that laws of motion might be discovered for men's actions, just as for falling bodies and planets." Albert O. Hirschman, *The Passions and The Interests: Political Actions for Capitalism Before its Triumph*, (Princeton: Princeton University Press, 1977), pp. 12-13.

that of consensus. “A spark of reason flashes,” Schmitt declares, “and a consensus emerges about the necessity to submit to the strongest power.”²⁹ Reason, in being attributed to an unnamed, anonymous energy, is not formed through consensus. Consensus is derivative of reason not reason itself.³⁰

Schmitt’s account of Hobbesian reason gives too much sway to the power of the miracle. Schmittian reason is thereby subjugated reason; that is to say, since reason must answer to the call of the miracle, which lies outside the realms of humanly experience, then its status as ‘rational’ is largely questionable. “Who is this new god,” Schmitt asks in relation to the leviathan, “who brings peace and security to people tormented by anguish, who transforms wolves into citizens and through this miracle proves himself to be a god?”³¹ In claiming that Schmittian reason is subjugated reason my intention is to communicate how reason becomes an arbitrary, spiritual force largely dispossessed of its modernist claim to represent an open, scientific understanding of thought and action.

Schmittian reason can thus be described as subjugated reason because the emphasis it places on the relationship between protection and obedience is dependent upon the unthinking acceptance of the dominant political norm; faith is tantamount to blind faith, since to question the terms upon which the leviathan is constructed would be to embrace anarchy above order. Schmitt’s endorsement of order is irrespective of its internal and external cost. In the Schmittian political universe, order is simultaneously virtue and *virtú*. This means that order is not just a question of the right conduct that political subjects must manifest in order to act according to publicly agreed norms; but, borrowing the language of Machiavelli, order is a strategic tool for the attainment of political power. She who commands the language of virtue – saying what conduct is needed by the state – is one who has attained mastery and dominion over the political form itself. This can be demonstrated in Schmitt’s discussion on the role of the public miracle within political discourse.

²⁹ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 33.

³⁰ Schmitt’s understanding of consensus is best conceived in terms of unity or homogeneity rather than deliberative forms of consensus.

³¹ *Ibid.*, pp. 31-32.

For Schmitt, the state plays a decisive role in determining the basis and extent of the miracle within public life. Rejecting a clear separation between church and state Schmitt's political Catholicism tends to merge both entities into one another. "The sovereign state power alone," Schmitt declares, "on the basis of its sovereignty, determines what subjects of the state have to believe to be a miracle."³² Schmitt, although not explicit as to why he thinks the state should participate in the determination of the miracle in public and spiritual life, is unwilling to grant the church the status as partner in civil society. Creating the conditions for the church to compete on the same terms as other groups within civil society would involve the loss of the spiritual domain from the public sphere. The temporal forces – trade unions, political parties, firms – would gradually undermine the strategic location of the church within the public sphere. What would be lost would be a structure for authoritative decision making, not on the basis of the fact that the church can no longer command but, more significantly, owing to the fact that the existentially decisive question can no longer be asked. Temporality provides the structural conditions for decision making but it cannot provide the existential conditions for authoritative decision making.

Schmitt acknowledges that Hobbes distances himself from the miracle in *Leviathan*, suggesting that Hobbes was essentially agnostical in his approach to the miracle. But Schmitt seeks to exploit the political potential of the miracle. The political potential of the miracle rests in its capacity to inspire awe into political subjects, akin to the 'political surplus' examined in relation to Schmitt's legal theory in Chapter 6. The concern with miracles stems less from a concern with the objective status of the miracle than its pragmatic dimension. "Did the miracle take place?" is of little interest to Schmitt. What matters more is the pragmatic-strategic dimension of miracle: *how are miracles deployed in the service of a regime of truth?* Schmitt's *Theopolitik* can be discerned in the emphasis he places on the miracle in Hobbes:

³² *Ibid.*, p. 53.

In judging Hobbes' theory of miracles, one should not forget that at that time that question had a concrete, direct political meaning. The miraculous healing of illnesses through hand touching belonged to the province of the king. Healings were considered to be emanations and signs of the sacred character of the person of the king, who, as Hobbes stated "is more than a mere layman." In the struggle against the Roman pope, this institutional component of kingship had to be defended. For the English people miraculous healings remained for a long time an important contrivance of the monarchy.³³

In claiming that Hobbes was agonistic on the question of the miracle, Schmitt seeks to underscore the centrality of *command power* above *truth power* in legal and political theory. Since the miracle cannot be reduced to an epistemological question – who, after all, can authenticate the miracle? – its reality is enacted through strategies in political ontology. Schmitt thinks that Hobbes occupies a radically anti-superstitious standpoint in trying to falsify the conditions of political order:

Critical readers of Chapter 37 of his *Leviathan* must conclude that a belief in miracles is invariably a superstition, at best a remnant of radical agnosticism which, in this respect, holds certain thing possible but none as true. Yet Hobbes, the great decisionist, here too accomplished his typically decisive turn: *Auctoritas, non Veritas*. Nothing here is true: everything here is command.³⁴

Schmitt's reading of *Leviathan* is radically anti-naturalistic. In reading Hobbes in terms of the artificial fabrication of political order – *homo artificialis* – the imprint of 20th century existentialism is unmistakable. Elements of Anglo-American pragmatism can also be glimpsed in Schmitt's reading of Hobbes. Systematic philosophy, involving the project of universal commensuration, is dropped in favour of edifying philosophy that undermines the very foundations of universality.³⁵ The unintended consequence of

³³ *Ibid.*, p. 54.

³⁴ *Ibid.*

³⁵ See Richard Rorty who calls for a new philosophy that can escape the dilemma of representation. Rorty links systematic philosophy to the project of universal commensuration. "Great systematic philosophers," he suggests, "like great scientists build for eternity. Great edifying philosophers destroy for the sake of their own generation. Systematic philosophers want to put their subject on the secure path of science. Edifying philosophers want to keep space open for the sense of wonder which poets can sometimes cause—wonder that is something new under the sun, something which is *not* an accurate representation of what was already

Schmitt drawing attention to the contrived nature of the miracle, particularly in relation to political reason, is that its revealing was supposed to offer an explanatory account of why subjects must submit to the sovereign; yet ironically, in directing political order towards an anti-naturalistic standpoint, political ontology operates in terms of contingency.

Why submit to the contingent? Schmitt does not anticipate this question. To contemplate the notion that people are, on the basis of contingency, free to review their standpoint in relation to the sovereign is not permissible for Schmitt. Schmitt regards order, especially the type of order that emerges from unity, as the *sine qua non* of the political. There is no scope for contesting the grounds of order itself. There is, nonetheless, a contradiction between the ontological claim that “nothing here is true: everything here is command” and the imploration that subjects must consent to the sovereign in the name of peace, security and order. Sovereignty is thereby commanded into being, rather than being the expression of an objectively true condition of right. Schmitt’s lack of faith in the reasonableness of political subjects is decisively anti-liberal. Given the contingent nature of political authority political subjects are compelled not through *reason* but *command* itself. Schmitt accepts that the miracle is a fabrication *in the service of a regime of truth*. Yet he is incapable of seeing how political subjects, cognisant of this political ontology, could use this knowledge to overthrow the sovereign as equally as supporting it. Denaturalisation has unintended consequences and the most unintended consequence may be that order itself is contested.

Schmitt, for example, cannot see how claiming that “nothing here is true: everything here is command” undermines the capacity of the political to operate without hindrance. If Schmitt were to provide a naturalistic interpretation of *Leviathan* then this would provide him with the epistemological tools to quell dissent. In this respect Schmitt provides an inconsistent reading of Hobbes’s classic text. Its inconsistency arises from the fact that Schmitt endorses the artificiality of political power whilst seeking to sustain the effects of this power itself. Strange bedfellows can be made between Schmitt and Michel Foucault

there, something which (at least for the moment) cannot be explained and can barely be described.” Richard Rorty, *Philosophy and the Mirror of Nature*, (Princeton: Princeton University Press, 1979), pp. 369-370.

who, in discussing Hobbes, phrases the traditional question of political philosophy in the following terms: “*how is the discourse of truth, or quite simply, philosophy as that discourse which par excellence is concerned with truth, able to fix limits to the rights of power?*”³⁶ Foucault disputes the centrality, and ultimately meaningfulness, of the traditional concern with truth. The politically significant question can thereby be conceived in terms of *Auctoritas* rather than *Veritas*: “what rules of right are implemented by the relations of power in the production of discourses of truth?”³⁷

5.5 Foucault and Schmitt: Regimes of power, regimes of truth

Carl Schmitt and Michel Foucault embody divergent approaches to the political. In linking Schmitt to Foucault the intent is not to identify intellectual kinship between these two thinkers. The interest resides in the fact that they provide different understandings of the Hobbesian legacy in contemporary political thought, whilst at the same time both concede, to varying degrees, the constructed nature of political discourse. For Foucault this can be evidenced in his claim that “[t]here can be no possible exercise of power without a certain economy of discourses of truth which operates through and on the basis of this association.”³⁸ For Schmitt this can be discerned in his claim that the “depiction of the juristically constructed covenant serves simultaneously to explain the appearance of a sovereign *person* brought about by representation.”³⁹ Both thinkers are struggling with the explanatory fragility of political epistemology, yet Schmitt attempts to ensure that *homo artificialis* does not break free from the ordered existence symbolically announced by and through the leviathan.

On the basis of this new ontology of the subject (expressed by Schmitt as *homo artificialis*) Foucault anticipates a new type of power. This new type of power can be described as post-Hobbesian. Foucault claims that “[t]his type of power is in every aspect the antithesis of that mechanism of power which the theory of sovereignty described or

³⁶ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, in Paul Rabinow (ed.), (Essex: Harvester Press, 1980), p. 93.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, pp. 93-94.

sought to transcribe.”⁴⁰ Schmitt still hankers after an account of sovereignty that, although constructed through regimes of truth, is ‘actual’ in its effects. Hobbesian power can be regarded in terms of sovereignty over. Foucault notes that this is a type of power “that is exercised over the Earth and its products, much more than over human bodies and their operations.”⁴¹ The preoccupation with sovereignty, whether naturalistic or anti-naturalistic, necessarily reinforces the dialectic of protection and obedience as the productivity of power. Post-Hobbesian power, as Foucault foretells, is liberated from concerns about the sovereign status of the state vis-à-vis persons: “If one wants to look for a non-disciplinary form of power, or rather, to struggle against disciplines and disciplinary power, it is not towards the possibility of a new form of right, one which must indeed be anti-disciplinarian, but at the same time liberated from the principle of sovereignty.”⁴² Schmitt cannot imagine a non-disciplinary form of power, free from conceptions of political right. To do so would undermine the very basis of the decision, especially when the decision must take place in the context of the dire emergency and make available a final, decisive adjudication.

Foucault claims that “the essential role of the theory of right, from medieval times onwards, was to fix the legitimacy of power; that is the major problem around which the whole theory of right and sovereignty is organised.”⁴³ Schmitt, on the other hand, does not seek to reformulate the understanding of political right that emerges in *Leviathan*. Schmitt’s discourse on sovereignty is concerned with the relationship between protection and obedience. This sovereignty cannot open itself up to a new political ethic of the kind demanded by Foucault. For Schmitt, sovereignty is a hygienic discourse, allowing no ambiguity in relation to final adjudication. When fused with decisionism sovereignty becomes the purest form of political right. This can be revealed in Schmitt’s claim that “[t]he concept of the sovereignty of the absolute state in a conceptually “clean” form, that is, one that shuns mixing and balancing with other state forms, has found no echo in the

⁴⁰ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, p. 104.

⁴¹ *Ibid.*

⁴² *Ibid.*, p. 108.

⁴³ *Ibid.*, p. 95.

public power of England.”⁴⁴ What Schmitt is suggesting is that the state which allows sovereignty to determine the conditions of the exception (without interference from parliament or civil society) is one which enjoys purity of state form. This state will be more adept at repelling both internal and external challenges.

Sovereignty matters for Schmitt for the sole reason that it personifies the conceptual machinery of the modern state. Sovereignty is not a tangible, concrete form. Since the sovereign proves itself through the exception, its ontological condition will always rest on a provisional and contingent ontology. Yet in spite of this contingency its truth effects are very real. This *conceptual Realpolitik* means that even though Schmitt acknowledges the artificiality of the sovereign situation it enjoys the status of truth, albeit grounded pragmatically. This functional ontology – where ontology is contingent on the effective representation of reality – means that sovereignty is experienced as a real, direct political force. Foucault, contrastingly, wants to dissociate sovereignty from its disciplinary ethic.

For Schmitt, the disciplinary ethic of sovereignty provides a basis for state functioning. If sovereignty is not backed up by disciplinary means, whether punitive and/or self-regulatory, then the state cannot provide a structure for political order. The state of nature is an artful invention of *conceptual Realpolitik*. This means that facticity (the condition of being a fact) matters less than credulity (the willingness to believe).

In the state of nature everyone can slay everyone else; everyone knows that everyone can slay everyone else; everyone is a foe and a competitor of everyone else—this is the well-known *bellum omnium contra omnes* [war of all against all]. In the civil, stately condition, all citizens are secure in their physical existence; there reign peace, security, and order. This is a familiar definition of police. Modern state and modern police came into being simultaneously, and the most vital institution of this security state is the police.⁴⁵

⁴⁴ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 80.

⁴⁵ *Ibid.*, pp. 91-92. Both Schmitt and Foucault emphasise the central role of the police in securing the conditions for order within the state. Foucault links the police to the evolution of a new economy of power and the evolution of state apparatuses. See, for example, where Foucault argues “the doctrine of the police defines the nature of the state’s rational activity; it defines the nature of the aims it pursues the general form of the instruments involved.” Michel Foucault, *Interviews and Other Writings: 1977-1984*, in Lawrence D. Kritzman (ed.), (New York: Routledge, 1990), p. 74.

In characterising Schmitt in terms of *conceptual Realpolitik* the intention is to make problematic his assessment of the modern state. This reaches breaking point when considering the ontology of modern state form, especially since Schmitt treats *Leviathan* as the exemplar of the modern theory of the state. The leviathan is the corporate entity which allows for the distinction between friend and enemy to be overpowered. The leviathan is not embroiled in the ceaseless battle between friend and enemy. To do so would undermine the very authoritativeness of this state form. The leviathan, as Schmitt details, “shows a god that assures peace and security.”⁴⁶ In claiming that the leviathan is not a ‘political-friend myth’ Schmitt wants to reinforce the importance of a political structure to transcend the perceived cracks within the pluralistic state system. This transcendental ethic is perverse in its primary assumption; namely, a higher entity is needed to ensure that the distinction between friend and enemy does not destroy the natural homogeneity of the political community. Rather than work with the divisions within the political community Schmitt, unsurprisingly, seeks to impose a routine of order upon warring factions to the constitution. But routine can never be a substitute for political rationality. In this regard, Schmitt seeks to compel heterogeneous subjects to accept a blueprint for order that is determinately homogenous. Rationality thus becomes an unthinking process, strategically positioned to facilitate the continued dominance of the state form under modernity.

Foucault’s definition of the doctrine of reason of state, involving a process of rationalisation, can be applied usefully in relation to Schmitt’s theory of the state. “The doctrine of reason of state,” Foucault suggests, “attempted to define how the principles and methods of state government differed, say, from the way God governed the world, the father his family, or a superior his community.”⁴⁷ In this respect, Schmitt’s linkage of political reason (*ratio*) to the miracle in theology takes rationality beyond the temporal domain. This means that political reason is, in fact, bound up with cosmological order. Taking rationality outside the temporal domain also means that everyday persons are

⁴⁶ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 94.

⁴⁷ Michel Foucault, *Interviews and Other Writings: 1977-1984*, p. 75.

unable to contest the grounds of the political. This is because rationality becomes epistemologically closed. The framework of political reason is consequently distanced from the experiential.

In linking Schmitt to Foucault the purpose is to merge their mutual understandings of the fabrication of political order (*homo artificialis*) with their radically different conclusions in relation to political sovereignty. For Foucault, rationalisation is more about extending the sphere of dominance of the state than coming to terms with the constitutive elements of the state itself. “[R]eason of state,” he argues, “is not an art of government according to divine, natural, or human law.”⁴⁸ The point of reason, especially in respect of the state, is to ensure the rationalisation of the state. This rationalisation is more concerned with constituting state power than understanding how the state has evolved as a practice of situated knowledge. The stately mission thus becomes to rationalise itself into further existence; that is, to increase the standing of the state vis-à-vis other states and, internally, to ensure that subjects within the state are emplaced within its system of knowledge.

5.6 Constructed reason *into* transcendental reason

Schmitt’s rationalisation of the state thereby serves to validate state norms. To compare the state to a ‘new god’ or ‘mortal god’ is to turn *constructed reason* into *transcendental reason*. Schmitt is insistent that the state is artificially constituted: “Its material and maker, *material et artifex*, machine and engineer, are one and the same, namely, men.”⁴⁹ The chief error of Schmitt’s account of the state is that in depicting the state as a ‘manmade product’ he wants to ensure that its sovereign authority withstands both internal and external challenge. This leads to the following dilemma: the origins of the state are earthly, the effects of the state are heavenly. This dilemma reveals a fundamental inconsistency in Schmitt’s theory of the state. On one level, Schmitt accepts Hobbesian legal positivism whilst, on another, he wants to ensure that the state achieves mastery over all other forms of discourse. This paradox is not resolvable within the Schmittian horizon. Schmitt is more concerned with absolute reason (how reason can exercise

⁴⁸ *Ibid.*, p. 77.

⁴⁹ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 34.

mastery and dominion over all other forms) than constructed reason (how reason constructs itself as reason). His discussion of Hobbes is therefore at odds with the way in which the Hobbesian state itself is constructed.

Schmitt praises Hobbes for introducing into political thought “the idea of a commonwealth brought about by human reason.”⁵⁰ But Schmitt, wedded to the absolute, is unwilling to consider the limits of human reason as a foundation for political order. Schmitt thinks that human reason can be dispensed with once the state is legitimated. “The leviathan,” Schmitt notes, “thus becomes none other than a huge machine, a gigantic mechanism in the service of ensuring the physical protection of those governed.”⁵¹ Schmitt overlooks the fact that in claiming that the commonwealth is the product of human reason also means accepting that it can be dissolved through human reason. Contrary to Schmitt, human reason should not be conceived as an essentially *procreative* or functional discourse. If human reason is to be accorded a decisive role in the formation of the state then, by implication, the human reason has the potential to undo this same order.

Schmitt’s understanding of human reason is thereby more concerned with the functional contribution of reason to stately order. Reason has no role to play once the conditions for order have been secured. This is owing to the fact that the product of reason – the sovereign-representative person of the state – becomes “much more than the sum total of all the participating particular wills.”⁵² Schmitt converts each strand of human reason, sprouting forth from individual wills, into a homogenous entity: “[T]he accumulated anguish of individuals who fear for their lives brings a new power into the picture: the leviathan.”⁵³ What is significant about this new form is not that it obliterates the individual strands of human reason, as noted above, but that it authors a transcendental ethic in relation to state form. The leviathan, Schmitt notes, brings about a ‘new god’ which “is transcendent vis-à-vis all contractual partners of the covenant and vis-à-vis the

⁵⁰ *Ibid.*, p. 37.

⁵¹ *Ibid.*, p. 35.

⁵² *Ibid.*, p. 34.

⁵³ *Ibid.*

sum total.”⁵⁴ Human reason is superseded by this new transcendental ethic which, ironically, could not exist had reason not willed it into being.

This anomalous account of the transcendental state, conceived as the state which stands above and beyond human reason, profoundly weakens Schmitt’s theory of the state. Schmitt wants to tell a story about the earthly origins of the state (as his reading of *Leviathan* attests) whilst at the same time representing the state in terms of a transcendental ethic. This is because the transformation of human reason into stately reason is accompanied by a change in the way in which reason is understood. This can be discerned in the new metaphorical landscape used to describe reason. Human reason involves an examination into the human soul and, as Schmitt notes, is represented in the notion of the leviathan as “the soul of the huge man.”⁵⁵ But when the leviathan becomes an entrenched practice, when human reason gives way to procedurally bound reason, then the state can be expressed in terms of a machine. “The mechanization of the concept of the state,” Schmitt remarks, “thus completed the mechanization of the anthropological image of man.”⁵⁶ Stately reason is accorded a higher, abstract status compared to human reason. The mechanization of the state thereby serves to take reason out of its earthly domain.

Schmitt must demonstrate why stately reason is to be accorded a higher status than human reason. Having debunked the naturalism of the state, suggesting that the state is the product of human calculation, Schmitt then needs to explain why the product of human reason can itself be exempt from the workings of human reason. Schmitt is unable to do the former because that would undermine the very foundations of the political under modernity. Schmitt is reluctant to do the latter since this would mean that autonomous foundations of the political would be subject to constant renegotiation. Both reasons are related to the fact that Schmitt wants the state to be the authoritative domain of the political. As shall be examined in Chapter 6, in considering the concept of supralaw, Schmitt wants the state to enjoy unrivalled power in relation to the final decision. The

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, p. 37.

⁵⁶ *Ibid.*

question *who decides* can have only one answer for Schmitt: namely, the state as the representative device of the sovereign.

5.7 The Schmittian security regime

Leo Strauss is correct in pointing out that the meaning of the state of nature differs radically for Hobbes than Schmitt: “For Hobbes, it is the state of war of individuals; for Schmitt, it is the state of war of groups (especially of nations).”⁵⁷ Strauss is observant in drawing attention to the different teleological trajectories of both Hobbes and Schmitt. Where Hobbes desires restraint between subjects, Schmitt allows his subjects absolute expression of their political desires via the state. What results is the corporatisation of enmity rather than its containment. The state assumes responsibility for the naming of friend and enemy and, in so doing, turns the political energy of individual subjects in the state of nature into the political energy of the state. The security regime instituted through Schmitt’s juridical approach to the political results in the state achieving mastery and dominion over all other entities within discourse.

It is important to note that Schmitt differs from Hobbes in the amount of cultural production allowed for in the state of nature. Schmitt works from the Hobbesian premise that the “Passions of men, are commonly more potent than their Reason.”⁵⁸ Yet Hobbes is adamant that in the state of nature subjects should not be accorded the status of political subjects. This type of subject should be understood as a pre-political subject owing to the fact that the state of nature offers nothing in terms of cultural, political, and moral production. Passion overpowers reason in the Hobbesian account of the state of nature. Anthropologically speaking, the subjugation of reason to passion results in the classic image we associate with the Hobbesian state of nature. This is a landscape without culture, devoid of any cultural, moral, and political reason. “In such condition,” as is often quoted, “there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of Earth; no Navigation, nor use of the commodities that may be imported by sea; no commodious Building; no Instruments of moving, and removing

⁵⁷ Heinrich Meier, *Carl Schmitt and Leo Strauss: The Hidden Dialogue*, Harvey Lomax (trans.), (Chicago: Chicago University Press, 1995), p. 99.

⁵⁸ Thomas Hobbes, *Leviathan*, p. 131.

such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violence death; And the life of man, solitary, poore, nasty, brutish, and short.”⁵⁹

Strauss credits Schmitt with thinking that “all political behaviour is oriented toward *friend* and enemy.”⁶⁰ Contrary to Hobbes, Schmitt does not negate the state of nature but merely transforms political desire from the individual to the state level. Hobbes does not talk of political desire or political passion in the state of nature, since this would invalidate the anthropological claim that life without the sovereign is *acultural*. By *acultural* I want to draw attention to the absence of cultural production in the Hobbesian state of nature. Yet Schmitt takes the polemical motivation of the state of nature, in which every subject becomes the potential enemy of every other subject, housing it securely within the state. The question thus becomes whether Schmitt credits the logic of friend and enemy as a form of cultural expression and production. Hobbes regards *bellum omnium contra omnes* as a consequence of the libidinal domination of reason by the passions. Schmitt, as *The Concept of the Political* attests, embraces *bellum omnium contra omnes* as a matter of existential necessity when the decision must be made.

Schmitt’s endorsement of a militaristic ethic of the state, compelling political subjects to die for the nation in times of emergency, reinforces the Hobbesian political compromise: no protection without obedience. Iris Marion Young highlights this aspect of Hobbesian statecraft in her discussion of developments in the security regime following on from the terrorist attacks of September 11 2001: “We have accepted a deal: you subordinate your actions to our judgment of what is necessary, and we promise to keep you safe.”⁶¹ Yet where Hobbes regards the fear of violent death as a primary motivation driving subjects into political community, Schmitt treats the political community as a primary value of the political itself. Pragmatism (“the state helps me avoid the fear of violent death”) gives way to absolutism (“the state is the expression of democratic homogeneity, which keeps

⁵⁹ *Ibid.*, p. 89.

⁶⁰ Leo Strauss, *op. cit.*, p. 99.

⁶¹ Iris Marion Young, ‘Feminist Reactions to the Security Regime,’ *Hypatia*, Vol. 8, No. 1, Winter 2003, p. 226.

me safe because there is no Other within its borders”). The problem with this Schmittian ethic of the state is that ‘obedience’ and ‘protection’ are slippery concepts. With no formula to determine the perfect equilibrium between protection and obedience it is impossible to answer the following question: “how much protection do I purchase through my obedience?”

Schmitt cannot anticipate a question of this type. Put simply, this is because Schmitt values *authority* above *autonomy*. This normative coding treats the state as a value unto itself. Rather than stately authority being conceived pragmatically (where the state acts in the name of other normative objectives) the state becomes its own normative project. The state no longer is the service of freedom, autonomy, justice, and/or protection but seeks to extend its sphere of authority through a new form of rationality. “The state,” Schmitt declares, “derives its esteem and dignity from its organized inclusiveness and the calculability with which it functions rationally as a mechanism of command.”⁶² By linking the norm of “organized inclusiveness” to political rationality based on the ethic of command, Schmitt effectively eradicates the Other from the political community. Stately authority flourishes when democratic homogeneity is assured; stately authority languishes when the state can no longer provide the conditions for “organized inclusiveness.”

Iris Marion Young’s observation that a “security regime has an *external* and an *internal* aspect” is challenged through Schmitt’s theory of the state.⁶³ Young claims that *internally* a security regime must “root out the enemy within.”⁶⁴ Schmitt would not disagree with Young’s assessment of this internal dimension to security. What he would take issue with, on the other hand, is Young’s emphasis of the external dimension of a security regime. Schmitt is adamant that there is no order beyond the state: “The state has its order in, not outside, itself.”⁶⁵ This leads to an understanding of political order which establishes a rigid binary between internal order and external disorder. Organized inclusiveness and

⁶² Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 47.

⁶³ Iris Marion Young, *op. cit.*, p. 225.

⁶⁴ *Ibid.*

⁶⁵ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 47.

the mechanism of command can only be achieved at the domestic level. “*Ordo hoc non includit*” declares Schmitt when discussing the absurdity of thinking morally about relations between states, especially when states combat each other in times of war.⁶⁶ There is no such thing as a ‘just war’ because this would imply that order exists outside and beyond the state. Hobbesian legal positivism – *auctoritas, non veritas* – creates the conditions for thinking about the conditions of justice and injustice. As Hobbes notes in *Leviathan*, “[w]here there is no common Power, there is no Law: where no Law, no Injustice.”⁶⁷

The surprising aspect of Schmitt’s reading of *Leviathan* is that once the sovereign has established itself as the *summa potestas* there is scant regard for the autonomy of the political subject. Schmitt is resolute in claiming that the Hobbesian endorsement of *auctoritas* above *veritas* is not, in his own words, “a slogan of irrational despotism.”⁶⁸ Yet Schmitt also claims, quite paradoxically, that “it is no longer valid to distinguish between *auctoritas* and *potestas*, making the *summa potestas* into *summa auctoritas*.”⁶⁹ Merging *auctoritas* and *summa potestas* into the same conceptual schema does not provide a sufficient safeguard against despotism. This is because *auctoritas* belongs to the temporal world (and symbolises the technical rationality of the emergent state form under modernity). *Summa potestas*, on the other hand, signals a power above and beyond the everyday. This order turns authority into a spiritual principle, accessible only to those who possess the inner truth.

The consequence of this Schmittian ethic of state is that the dialectical relationship between protection and obedience is beyond reproach. The need for mutual security, as *Leviathan* documents, turns the Schmittian subject into a docile subject. Iris Marion Young expresses concern about this aspect of modern state theory when she identifies the impact that this ‘logic of protection’ has for citizenship. The masculinist ethos of protection, she details, turns democratic citizens into dependents. Thus, “[g]ood

⁶⁶ *Ibid.*

⁶⁷ Thomas Hobbes, *Leviathan*, p. 90.

⁶⁸ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 44.

⁶⁹ *Ibid.*, p. 45.

citizenship in a security regime consists in cooperative obedience for the sake of the safety of all.”⁷⁰ Related to this Schmittian ethic of state is the assumption that mutual security establishes relations of dependency. Schmitt captures this in his claim that “[w]hoever searches for his security with another becomes subject to that other one.”⁷¹

This claim is critical in understanding Schmitt’s reluctance to grant *auctoritas* a role beyond the state, notably at the international level. Schmitt thinks it futile to search for a grand order outside or beyond the state. Looking to *Leviathan* there is the assumption that life beyond the state is anarchical, akin to the state of nature. Schmitt is committed to the viewpoint that there is “no state between states.”⁷² The consequence of this is that domestic order becomes the concrete expression of political order; international order, on the other hand, is an ideological phantasm requiring the abandonment of the very essence of the political in the form of the friend and enemy distinction. Since there is no state between states there exists no concrete expression of the political at the international level. In times of the supreme emergency this means that “there can be no legal war and no legal peace but only the pre- and extralegal state of nature in which tensions among leviathans are governed by insecure covenants.”⁷³

Schmitt defines the space between states in terms of what it is not. Theorising the international in terms of what it is not means that Schmitt does not sufficiently come to terms with the significant ontological questions concerning the relationship between the political and the international. In claiming that there is no state between the state, rejecting the ontological claim of political cosmopolitanism, Schmitt invokes the friend and enemy distinction once again. Since there is no order between states – owing to the fact that mutual security leads to mutual dependency – life beyond the state is “continuously in danger.”⁷⁴ If this ontology is lost sight of, Schmitt suggests, then a state loses its ability to determine *who* and *what* constitutes friend and enemy. It makes no sense therefore to imagine the formulation of an international ethic to fill the space

⁷⁰ Iris Marion Young, *op. cit.*, p. 227.

⁷¹ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 49.

⁷² *Ibid.*, p. 49.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

between states. The only ethic worth pursuing in terms of international politics is one which affirms the functionality (and vitality) of the friend and enemy distinction in international life. Since Schmitt considers the state as a relationship of command, akin to a political machine, it makes little sense to bring ethics into the equation. As Schmitt relates, “considering the leviathan as a great command mechanism of just or unjust states would ultimately be the same as “discriminating” between just or unjust machines.”⁷⁵

It is necessary to consider how Schmitt’s ethic of state is linked to an understanding of international politics. This is because Schmitt identifies similar weaknesses of the liberal approach to politics at the international as well as the domestic level. Schmitt’s *Nomos of the Earth* presents a critique of the liberal model in politics, especially its desire to establish a universally recognised model of international law. Schmitt is concerned with the inability of the European tradition of law – *jus publicum Europeum* – to provide a structure for order within an international sphere marked by both geographical and cultural divisions. This law originally concerned the law existing between European sovereign states. One of its primary assumptions was that European public law provided a compelling template for governance and order beyond the European world. In this respect, Schmitt warns against an image of the international which rests upon ‘global’ assumptions about the capacity of European law to remake the world. Schmitt argues that for centuries “humanity had a mythical image of the earth, but no scientific understanding of the whole.”⁷⁶ This mythical image of the earth failed to take seriously the division of the world into geopolitical units, each embodying their own image of law vis-à-vis other traditions.

For Schmitt, the belief that European public law can become a foundation for international law rests upon a faulty understanding of *nomos* in international politics. Schmitt warns against thinking of *nomos* in terms of the customary principles governing conduct at the international level. To proclaim that there is law at the international law (and that this *nomos* provides a structure for order) is to overlook the fact that *nomos* first

⁷⁵ *Ibid.*, p. 50.

⁷⁶ Carl Schmitt, *The Nomos of the Earth in the International Law of Jus Publicum Europaeum*, (New York: Telos Press, 2003), p. 50.

emerges through the process of land acquisition. Schmitt wants to retain the original sense of the word *nomos* which means “to divide” and “to pasture” the earth rather than law as the regulation of the norm.⁷⁷ For this reason, Schmitt notes that we should not lose sight of the fact that *nomos* refers “to a constitutive act of spatial ordering.”⁷⁸ This spatial ordering is historically grounded, and involves the establishment of clear geopolitical divisions across the earth. These divisions constitute fixed entities, each carrying with them comprehensive worldviews that invalidate universalistic claims about the capacity of international law to operate across the world.

The important thing to note about Schmitt’s understanding of *nomos* is that it places the emphasis on the geopolitical domain – the division of the world into states – rather than international law as mirror of a cosmopolitan or international ethic. For Schmitt, *nomos* refers to the fundamental process of apportioning space. In claiming that “the original act is *nomos*” Schmitt does not invoke an originary myth in which the order of the earth can be understood in terms of previous geopolitical divisions. This is because each era generates its own *nomos*:

Such constitutive processes are certainly not everyday occurrences, but neither are they simply matters of bygone times and only of archaeological or antiquarian interest today. As long as world history remains open and fluid, as long as conditions are not fixed and ossified; in other words, as long as human beings and peoples have not only a past but also a future, a new *nomos* will arise in the perpetually new manifestation of world-historical events. Thus, for us, *nomos* is a matter of the fundamental process of apportioning space that is essential to every historical epoch – a matter of the structure-determining convergence of order and orientation in the cohabitation of peoples on this now scientifically surveyed planet. This is the sense in which the *nomos* of the earth is spoken here. Every new age and every new epoch in the coexistence of peoples, empires, and countries, of rulers and power formations of every sort, is founded on new spatial divisions, new enclosures, and new spatial orders of the earth.⁷⁹

⁷⁷ *Ibid.*, p. 70.

⁷⁸ *Ibid.*, p. 71.

⁷⁹ *Ibid.*, pp. 78-79.

Schmitt's concept of *nomos* thereby involves drawing a distinction between *nomos* as the appropriation of the earth (territorially establishing the conditions by which the world is subsequently divided) and the notion of *nomos* as a normative statement about the possibility of global order. According to Ulmen, Schmitt introduces the term *nomos* in 1934 to talk of "concrete order thinking" rather than positivist "legal order" thinking which is largely grounded in the normative.⁸⁰ Mitchell Dean echoes this in noting that Schmitt's concept of *nomos* can be read as an attack on the "decadence of present-day legal thinking and [a desire] to establish a theory of the preconditions of concrete social orders."⁸¹ In saying that *men* rather than *law* should provide the basis for understanding the dynamics of state conduct at the international level Schmitt is warning against the reification of international law. That is to say, international law should be understood in terms of the existing spatial ordering of the world (especially its divisions) rather than as the embodiment of substantive, universal truths about law. This is reflected in Schmitt's demand that international law be conceived in terms of the "element orders" of "terrestrial being" and how these orders have largely been shaped by a European tradition of jurisprudence.⁸²

This demand for concrete level thinking about international order (as distinct from normative reflection on the international) is evident in Schmitt's rejection of Hellenic cosmopolitan law. Schmitt rejects the cosmopolitanism of Hellenic states as an example

⁸⁰ See the translator's introduction to Schmitt's *The Nomos of the Earth*. Ulmen argues that Schmitt envisaged a "concrete territorial spatial order" (i.e. a *nomos* of the earth) which would allow new friend/enemy groupings to emerge in international politics. Concrete order thinking is contrasted to normative thinking. See, for deeper discussion of this point, Ulmen's claim that Schmitt is critical of those who think that "*law*, not *men*" should rule. *Ibid.*, pp. 19-20.

⁸¹ Mitchell Dean, 'A Political Mythology of World Order: Carl Schmitt's *Nomos*', *Theory, Culture & Society*, 2006, Vol. 23, No. 5, p. 4. Dean argues that Schmitt "is a thinker concerned with humankind's necessarily *telluric* (or earth-bound) character; the philology of *nomos* reveals not the primacy of appropriation but the concrete existence of human communities in their occupancy of the earth and orientation on it. This *nomos* exists prior to nomads, movement, borders, territories, settlements and households, and above all, positive laws. *Nomos* – at least in the versions familiar to non-nomadic societies – is, as he sharply puts it, a 'fence-word' (Schmitt, 2003 [1950]: 75): it creates territory, defines locality, marks places, separates backyards and defines households." *Ibid.*, p. 7.

⁸² Carl Schmitt, *The Nomos of the Earth in the International Law of Jus Publicum Europaeum*, (New York: Telos Press, 2003), p. 39.

of international order since it endeavours to make a world-state out of a city-state.⁸³ The spatial order of the earth, in order to be truly global, must understand the earth as a whole. It must not generalise what it takes to be a global order from a specific legal order. Yet, for Schmitt, this is essentially what the *jus publicum Europeum* has done in relation to international law. International law, filtered through the prism of the *jus publicum Europeum*, fails to transcend the territorial division of the world into European and non-European peoples. Schmitt's concept of *nomos* thereby operates as a methodological tool by which the international system can be understood. The important thing to note is that the international is to be understood through historical *particulars* rather than the establishment of transhistorical *universals*.

For Schmitt, the concept of *nomos* can be understood as the “constitutive legal process” of the international system.⁸⁴ Paying attention to the historical development of *nomos* – *between* and *within* states – invalidates the claim of the *jus publicum Europeum* to operate as a foundation for international law and order. This is because *nomos* should be framed in relation to three processes which, by their very nature, undermine the very notion of the international. These three processes – appropriation, distribution, and production – are fundamental to the spatial order of the international system. They involve the fusion of the territorial (an ability to distinguish *mine* from *thine*) with a concept of the political (an ability to distinguish *friend* from *enemy*). For Schmitt, the first notion of *nomos* involves the appropriation of land which was recognised in Locke's concept of property. Schmitt endorses Locke's notion of property as jurisdiction over the land. Thus, Schmitt argues that land appropriation is “the archetype of a constitutive legal process externally (*vis-à-vis* other peoples) and internally (for the ordering of land and property within a country).”⁸⁵ Distribution is the second dimension of *nomos*. Looking at the way in which the resources of the world are divided across the

⁸³ This is evident in Schmitt's claim that “we can disregard the philosophical generalizations of the Hellenistic period, which made a *cosmopolis* [world-state] out of a *polis* [city-state], because they lacked a *topos* [orientation], and thus had no concrete order.” *Ibid.*, p. 50.

⁸⁴ *Ibid.*, p. 47.

⁸⁵ *Ibid.*

international system is necessary to understanding the spatial ordering of the globe.⁸⁶ The third dimension of *nomos* involves a qualitative assessment of the internal workings of a given territorial space, especially consideration of its processes of production. Thus, Schmitt assigns *nomos* a primary role in the internal and external workings of the state:

Each of these three processes – appropriation, distribution, and production – is part and parcel of the history of legal and social orders. In every stage of social life, in every economic order, in every period of legal history until now, things have been appropriated, distributed, and produced. Prior to every legal, economic, and social order, prior to every legal, economic, or social theory are these elementary questions: *Where and how was it appropriated? Where and how was it divided? Where and how was it produced?*⁸⁷

Schmitt regards states as the primary vehicles of appropriation, distribution, and production across the earth. Expressing a disbelief in the capacity of law to govern the earth (“in the name of humanity”) Schmitt looks to the specific distribution of the earth through territorially bounded states. A system of international law that invokes ‘humanity’ overlooks how law is legitimated through the original act of appropriation. Thus, speaking in terms of a ‘world unity’ would require there to be a spatial order in which the world was held in common. This would mean the suspension of established geopolitical divisions and the possibility of preventing future divisions from emerging. International law would thus require humanity to ‘appropriate’ the earth:

Has humanity today actually “appropriated” the earth as a unity, so that there is nothing more to be appropriated? Has appropriation really ceased? Is there now only division and distribution? Or does only production remain? If so, we must ask further: Who is the great appropriator, the great divider and distributor of our planet, the manager and planner of unified world production? This question should warn us against ideological short-circuits. At work here are widespread and generally forceful, although scientifically superfluous simplifications. They suggest fictional unities. Their simplifications can be overcome only by the deeper simplicity of original concepts.⁸⁸

⁸⁶ Schmitt expresses this in the following terms: “Concretely speaking, *nomos* is, for example, the chicken in every pot that every peasant living under a good king has on Sunday, the parcel of land every farmer cultivates as his property, and the car every American worker has parked in his garage.” *Ibid.*, p. 327.

⁸⁷ *Ibid.*, pp. 327-328.

⁸⁸ *Ibid.*, p. 335.

Schmitt's treatment of the global as a fictional entity implicitly questions the capacity of "the international" to function in two respects. Firstly, the international cannot be adopted as the organising principle by which the *pluriverse* can be understood. The very notion of "the international" is at odds with the radical plurality that exists between and amongst states. Schmitt assumes that states can achieve a *democratic homogeneity* within their own territories. No such assumption exists for Schmitt when states confront each other as states; that is to say, the system sustains itself through the ethic of statecraft.

Schmitt's reading of the international emphasises the way in which realities of world politics are to be understood in terms of the process of appropriation. Mastery and dominion is at the core of Schmitt's reading of the international. Schmitt's discussion of the foundations of world politics grounds the question of sovereignty in the geopolitical. In so doing, Schmitt's theory of the state vigorously upholds the distinction between internal order and external disorder. In order for the state to achieve internal order – to realise the substantive goal of democratic homogeneity – law must be conceived in terms of its capacity to command obedience rather than its ability to capture an inner truth in relation to legality. Within this state, law is understood as a "manifestation of right" not as a manifestation of truth.⁸⁹ Legality, as shall become clearer in the subsequent chapter, becomes the chance to compel obedience: "the specific justification of state coercion is legality."⁹⁰ Schmitt's account of law is strongly influenced by Hobbes. This is particularly so when the strategic rationality of law is taken into account. Since law should not be understood as the touchstone of legality it is important to consider how legality is linked to the strategic rationality of the state. Schmitt thereby grants law a functional role in consolidating the domain of state power. Modernity must consolidate state power and 'law' becomes the perfect vehicle to ensure that command and obedience become the guiding norms of political community. This means that "law became a means of compulsory psychological motivation and calculable functioning that can serve different aims and contradictory contents."⁹¹ But the central objective of law remains the

⁸⁹ *Ibid.*, p. 66.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*, p. 69.

consolidation of stately authority so that the state can enjoy both *summa auctoritas* and *summa potestas*. This is expressed by Schmitt when he claims that “Hobbes conceptualized the transformation of right into a positive legal command.”⁹²

Related to this transformation of law from right (*law as the expression of right*) to command (*law as the expression of obedience*) is the emergence of the state form as a perfectible institution of the political. Rationality plays a decisive role in making the state the exemplar of the political. Command and obedience are fused together to create a form of political rationality which legitimates the power of the state. It does this without incursion from both above (cosmopolitan political law is unimaginable) and below (deliberative forms of democracy are kept at bay). In so doing, political knowledge and technology are inextricably bound up with each other. As Schmitt argues, “[t]he admirably perfected armature of a modern state and the complicated command mechanism of its administrative apparatus—the result of its incredible technical inventions—requires a specific rationality, a form of command, and a plan expertly formulated and executed, signifying the transformation of legitimacy into legality and the divine, natural, or other prestate right into positive state law.”⁹³

Schmitt thereby links political rationality to the development of the technocratic machinery of the modern state, emphasising the way in which stately authority is constituted through the new logic of technology. Schmitt does not provide a comprehensive explanation of how this new political rationality, one in which states *command* and citizens *obey*, is produced through technology. This is because Schmitt is more interested in the metaphorical landscape of political rationality than coming to terms with political rationality in its syntactical or structural context. It is important to note that Schmitt’s analysis of the evolution of stately authority is considerably indebted to the German intellectual tradition associated with Max Weber. Schmitt’s vocabulary is decidedly Weberian, documenting how the Hobbesian ethic of state (protection and obedience) rationalises itself into a workable legal system. Part of this rationalisation

⁹² *Ibid.*, p. 67.

⁹³ *Ibid.*

involves the political management of risk *by* and *through* the state: “To such a rational state power belongs the assumption of total political responsibility regarding danger and, in the sense, responsibility for protecting the subjects of the state.”⁹⁴

The political management of risk *by* and *through* the state depends on the establishment of procedurally accepted norms that, by their very nature, consolidate this dimension of state power. By keeping substantive questions off the political agenda (especially those concerning the domain of political right) the state is able to enforce the security regime, turning citizens into docile subjects: “If protection ceases, the state ceases, and every obligation to obey ceases.”⁹⁵ Risk builds the Schmittian security regime, erecting a system of perfect legality to ensure that the relationship between protection and obedience remains uncontested. But whereas Schmitt thinks that Hobbes has solved the problem of political order (by instituting a legal order which guarantees security) we should keep in mind the normative construction of risk and security against the backdrop of the state. Moreover, we are well served by Ulrich Beck’s account of the ‘world risk society’ in which the management of risk becomes the core mission of the state. Yet the central problem with this risk is that it defies management. World risk society thus becomes, in Beck’s own words, “*how to feign control over the uncontrollable*.”⁹⁶ Schmitt’s need to justify the existence of stately authority, an apologia for both *summa auctoritas* and *summa potestas*, is not sufficiently critical to question the difference between security as a condition and security as a regime. That is to say, Schmitt treats security as a condition, something to be attained rather than, as the word ‘regime’ suggests, a network of power relations which determines the conditions under which a system occurs or is maintained. In this respect, we should reject Schmitt’s naturalisation of Hobbesian political epistemology, because it neglects the strategic location of ‘security’ in justifying the state.

⁹⁴ *Ibid.*, p. 72.

⁹⁵ *Ibid.*

⁹⁶ Ulrich Beck, ‘The Terrorist Threat: World Risk Society Revisited,’ *Theory, Culture & Society*, Vol. 14, No. 4, 2002, p. 41.

Paying attention to the way in which the state *feigns control over the uncontrollable* severely undermines the Schmittian reason of state. This is because Schmitt demands that the state assert itself when confronted by threats. Beck, on the other hand, calls for a ‘paradigmatic reconstruction’ of social science from a national to a cosmopolitan perspective:

Thus world risk society makes heavy demands on social science. Social science must be re-established as a transnational science of the reality of de-nationalization, transnationalization and ‘re-ethnification’ in a global age – and this on the levels of concepts, theories and methodologies as well as organizationally. This entails that the fundamental concepts of ‘modern society’ must be re-examined. *Household, family, class, social inequality, democracy, power, state, commerce, public, community, justice, law, history, politics* must be released from the fetters of methodological nationalism and must be reconceptualized and empirically established within the framework of a cosmopolitan social and political science which remains to be developed.⁹⁷

Schmitt would not permit ‘legal method’ to be hijacked by the normative project of cosmopolitan political and social science. On the value and viability of political cosmopolitanism Schmitt is determinedly skeptical. States are made (and fall) according to their capacity to generate a concrete image of the friend and enemy grouping. So what does Schmitt make of states who claim that they have no enemies? In addressing this question it is necessary to keep in mind the function of the friend and enemy grouping in creating the Schmittian security regime and, in so doing, replicating the Hobbesian political dialectic of protection and obedience.

The state which seeks to build friendship across and between other states (as distinct from the state which builds alliances) is met with condemnation by Schmitt. In *The Concept of the Political* Schmitt claims that “it would be a mistake to believe that a nation could eliminate the distinction of friend and enemy by declaring its friendship for the entire world or by voluntarily disarming itself.”⁹⁸ Schmitt believes that the failure of the state to

⁹⁷ *Ibid.*, pp. 53-54.

⁹⁸ Carl Schmitt, *The Concept of the Political*, p. 52.

define the enemy concretely endangers the Hobbesian reason of state; namely, the mutual relation between protection and obedience. Observing this Hobbesian state ethic is not one of choice for states. The relationship between protection and obedience is the product of both ‘human nature’ and ‘divine right.’⁹⁹ This leads Schmitt to claim that “*protego ergo oblige* is the *cogito ergo sum* of the state.”¹⁰⁰

Taking *protego ergo oblige* as the Hobbesian reason of state produces a unidirectional understanding of state power, especially in relation to the productivity of this power. Foucault has warned against conceiving power in terms of its capacity to repress or prohibit.¹⁰¹ Schmitt readily acknowledges that the image of the leviathan is more than an image, attacking at the very core of how political power functions through the modern state. “In this domain,” Schmitt proclaims, “mere “values” do not “hold true”; what effectively govern are force and power, throne and master.”¹⁰² Schmitt even derides Immanuel Kant for lacking the philosophical and metaphorical fortitude to “conjure an image like that of the leviathan.”¹⁰³ Unlike Hobbes, Kant did not have “the courage to see the unity of political commonwealth in the image of a powerful monster that combined god, man, animal, and machine.”¹⁰⁴ Schmitt’s treatment of political power is, in this respect, largely juridical. Power is identified with “a law which says no.”¹⁰⁵

Schmitt’s unidirectional understanding of state power associates productivity with the repressive potential of the friend and enemy grouping. Power thus becomes the law which says no to the enemy, existentially negating the enemy in the name of the security regime. Schmitt can account for the repressive armature of the modern state – the police, the army, and the court system – but little more beyond this. Foucault’s observation that political theory has “never ceased to be obsessed with the person of the sovereign”

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Foucault claims that repression provides an insufficient foundation to think about the workings of power in human thought, action and science. He claimed that repression is “inadequate for capturing what is precisely the productive aspect of power.” Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, p. 119.

¹⁰² Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 81.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, p. 119.

provides an illuminating critique of Schmittian state theory.¹⁰⁶ For Foucault, the juridical understanding of power is linked to the institution of the monarchy and the need for a higher authority to put an end to feudal divisions. The Hobbesian security regime is thus the embodiment of this juridical understanding of power, designed to secure protection whilst maximising the conditions for obedience.

Schmitt cannot imagine forms of political power that disregard the binary logic of the friend and enemy grouping. This is a political world that pays little heed to the Arendtian concept of excellence – *aretē* and *virtus* – in the public sphere. Whilst Arendt's account of excellence unduly reinforces the division of space into *public* and *private* there is utility in considering how Schmitt's public political space (the state) narrows the opportunity for innovation, excellence, and creativity. Arendt intimates that the "public realm, as the common world, gathers us together and yet prevents us falling over each other, so to speak."¹⁰⁷ Schmitt's state theory, carried metaphorically through the image of leviathan, is less benign than the account of the public realm offered by Arendt. Were Schmitt to talk of the state in terms of "gather us together" it would be to signal the need for democratic homogeneity across a political community. The technology of this political community is the state, supported by the leviathan which Schmitt describes as potentially "the most total of all totalities."¹⁰⁸

5.8 The leviathan lost

Schmitt is troubled by the fact that the leviathan, the most total of all totalities, no longer commands the respect it enjoyed in the early modern period. This is because the modern state has become a site in which the expression of the political is characterised by heterogeneity rather than homogeneity. Multiple expressions of the political undermine the binding force of the leviathan, turning totality into indecision. The leviathan is now a "museum curiosity" which can "no longer make a sinister impression."¹⁰⁹ Schmitt attributes the decline of the leviathan image to the fact that in becoming the dominant

¹⁰⁶ *Ibid.*, p. 121.

¹⁰⁷ Hannah Arendt, *The Human Condition*, (Chicago: Chicago University Press, 1958), p. 52.

¹⁰⁸ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 82.

¹⁰⁹ *Ibid.*

technology of the state the “huge whale” was eventually caught.¹¹⁰ The capacity of the leviathan image to regulate the “conduct of conduct” now comes to an end as democratic pluralism unleashes itself on the popular imagination.¹¹¹ If democratic homogeneity aimed at the unitary expression of the political, defining the friend and enemy grouping without ambiguity, then democratic pluralism aims to free up the horizon of the political. The leviathan lost signals the colonisation of the Hobbesian reason of state by ‘political’ liberalism. Measured against the Schmittian concept of the political the liberal reason of state is weak. Its right to be called ‘political’ reason is doubtful, owing to the fact that in expanding the points at which decisions are to be made it delegitimises the *summa auctoritas* and *summa potestas* of the leviathan.

Taken together, the Schmittian ethic of state is an example of the *partial modernity* at the core of Schmitt’s political and legal theory. Methodologically, Schmitt admires the technology of power instituted through Hobbesian legal positivism. It promises to delink legality from a prior system of right by focusing on the capacity of a higher authority to establish order within the state (Schmittian order, keep in mind, is homogeneous order). At the same time, whilst Schmitt’s legal positivism signals a movement away from a prior system of right it leaves unchallenged the substantive concept of political right itself. Schmitt simplifies the Hobbesian theory of state, transposing the image of leviathan directly onto the contours of the modern state. The dilemmas of authorisation, as discussed above in relation to Quentin Skinner, are left off the ethical agenda. Schmitt’s ethic of state is caught between constructivism and essentialism, modernity and pre-modernity. It is mastery and dominion at the very extremities of discourse.

¹¹⁰ *Ibid.*

¹¹¹ For an excellent discussion on the ‘conduct of conduct’ see Nikolas Rose who defines this in terms of “the invention, contestation, operationalization and transformation of more or less rationalized schemes, programmes, techniques and devices which seek to shape conduct so as to achieve certain ends.” Nikolas Rose, *Powers of Freedom: Reframing Political Thought*, (Cambridge: Cambridge University Press, 1999), p. 3.

6

The Schmittian Legal Universe

What is the Schmittian legal universe? This chapter sets out to characterise Carl Schmitt's understanding of legality in terms of constitutional form and conceptions of political right. By understanding the ontology and teleology of the Schmittian legal universe – the origins and ends of legality – it becomes possible to come to terms with the overall constitutional project imagined by Schmitt. Schmitt's account of legality defies the previously encountered binary logic of the political which resulted in politics becoming little more than the existential distinction between friend and enemy. Legality is not about lawful and unlawful but, in fact, an endorsement of a higher concept of political right. This chapter details the different Schmittian conceptions of legality, examining how legality takes on different forms under different constitutional systems.

The purpose of this investigation is to assess the extent to which Schmitt's legal universe, giving a legal ethic constitutional form, is predicated on a higher account of legality. This higher legality, termed by Schmitt as *supralegality*, stands above and beyond the everyday norm. Its legality is neither dependent on the authority of the judge nor the democratic will of the politician. Schmitt is adamant that the answer to constitutional chaos is *supralegality*, a concept that endows the exceptional lawmaker with the capacity to exercise final power in relation to the decision. Whilst Schmitt riles against the *closed system of legality* promoted by pluralism – placing checks and balances on the exercise of state power and privileging formal law above substantive law – the consequences of this legal universe cannot be sanctioned. An *open system of legality* is, in fact, preferable to one that forecloses the possibility of challenging the norm; but the *open system of legality* proposed by Schmitt values democratic homogeneity above democratic inclusion, allows for the suspension of fundamental rights. In so doing, it turns substantive legality into a technology of final power.

6.1 Legality defined

In *Legality and Legitimacy* Schmitt links the question of state legitimacy to the framework of the constitution. Schmitt's primary focus relates to the Weimar Constitution and his specific criticism that the Weimar Constitution is enfeebled by its endorsement of the pluralist commitment to 'equal chance.'¹ In considering the constitutional architecture of legitimacy – stressing the constitutional manufacturing of state legitimacy – Schmitt's legal reasoning works from positivist assumptions about the creation of legal order. Despite Schmitt's lack of faith in the capacity of the constitution to contain the political, especially when it is called to act boldly in the dire emergency, there is tacit acceptance of the need for constitutional entrenchment of the powers within a given state.

The primary caveat in relation to Schmitt's endorsement of constitutionally entrenched powers is that constitutions are neither static nor final in their capacity to delimit state power; when the state must operate in conditions where the norm is redundant, ineffectual and/or non-existent then the constitution becomes little more than a scrap of paper. In these circumstances we may be inclined to mourn the death of the constitution, especially its capacity to generate norms concerning the legal holding of state power, but the emergency of real life demands the abandonment of political nostalgia about who decides in favour of the decision itself.

Schmitt's discussion on the legality of a given constitutional regime depends largely upon how final power is to be distributed within the state.² Schmitt is concerned less with the origins of legality than with its ends. The question is not 'from whence does legality derive?' but 'how does legality prove its legality through the moment of the decision?' Schmitt's rejection of the material cause – concerned with that out of which legality

¹ Carl Schmitt, *Legality and Legitimacy*, (Durham, NC: Duke University Press, 2004), pp. 33-34.

² By the term 'final power' I want to draw attention to Schmitt's preoccupation with the finality of a decision. For a decision to be an authentic decision it needs to foreclose the possibility of other decisions displacing it from its authoritative perch.

comes into being – is significant in terms of political epistemology. Schmitt's enduring preoccupation with the final cause – concerned with the telos of legality – might possibly be linked to his support for the Hobbesian legal arithmetic.³ Schmitt warns against the reduction of law to pure form. The concept of supralawfulness challenges the literalist image of law whereby what constitutes legality is that which has been codified.

The ideological trajectory of Schmitt's legal theory remains centered on the inability of liberalism to adjudicate when it must encounter the dire emergency. The problem of adjudication is not solely the inability of liberalism to make decisions (although this is a real problem according to Schmitt) but the illusory authority of the decision itself under liberalism. This can be linked to the false promise of liberalism in terms of adjudication: it seeks out an objective realm of law (as contained in the principle of liberal neutrality) but its decisions are necessarily embedded in subjective judgements about what constitutes legality. It is therefore important to distinguish between law that is the product of lawmakers (and thereby subject to the ebb and flow of state systems) and law that is the product of universal legal reason. Substantive law, Schmitt notes, entails a "lasting regulation with a definable and certain content."⁴ Formal law, on the other hand, is political law. This law is neither discovered nor divined but created in the course of state functioning: "The lawmaker creates what he wants in the lawmaking process; that process is always 'law,' and it always creates 'right.'"⁵

6.2 Formal Law vs. Substantive Law

Schmitt's distinction between formal and substantive law has significant implications for the administration of the state. The battleground concerns the status of law and its

³ One of the problems with Schmitt's discussion on the dimensions of legality and legitimacy within the various constitutional forms is that he fails to link these to wider debates in legal theory. Since his specific focus concerns the Weimar Constitution, especially its perceived weaknesses, he is unable to perform the type of metatheoretical analysis that emerges in his writings on the political and international law. It is therefore incumbent upon the reader of *Legality and Legitimacy* to 'join the dots' between his analysis of constitutions and his wider legal theory.

⁴ *Ibid.*, p. 22.

⁵ *Ibid.*, p. 23.

constitutional formation: should the constitution aim at the entrenchment of substantive law or should its constitutional work be kept to the purely formal aspects of law? For Schmitt the constitution acts as the primary document of state legality within the modern state. If the constitution is unable to choose between law as the embodiment of universal truths (substantive law) and law as the expressed will of the lawmaker (formal law) then the value of the constitution is called into question. Schmitt argues that when law is deprived of substantive form – including considerations of the foundations of reason and justice within a political community – then anything “can be made legal and given the form of law through a decision of parliament or by the other organs participating in the legislative process.”⁶

By opting for a formal concept of law the parliamentary legislative state lacks the necessary capacity to adjudicate in situations where the authority of the lawmaker is subject to radical disagreement. Since there is no “lasting regulation with a definable and certain content,” a condition of substantive law, the constitution remains provisional and open.⁷ This means that the “lawmaker creates what he wants in the lawmaking process” rather than establishing an enduring constitutional framework capable of transcending domestic and external threats. In such a situation, where law is the partisan reflection of a specific time-moment, the constitution becomes little more than the administrative tool of the lawmaker. The constitution works in such a situation because the background conditions can be said to correspond to the normal situation that was presupposed in the framing of the law itself.

Schmitt places a premium on the end points of law (and, by implication, the transformation of legality into a pure *auctoritas*) within constitutional theory. Rather than celebrate the capacity of the constitution to regulate the legal workings of a political community or its ability to generate positive values of identity and belonging, Schmitt’s

⁶ *Ibid.*, pp. 20-21.

⁷ *Ibid.*, p. 22.

legal focus is disproportionately directed to the risky relationship between the norm and the exception. In the Schmittian legal world, the exception trumps the norm. Legal ambiguity, especially when the by-product of rival party groupings vying for constitutional control, cannot be overcome through a constitutional framework reflecting the temporal values of the lawmakers.

6.3 Supralegality defined

The distinction Schmitt draws between legality and supralegality demonstrates how Schmitt accords normative priority to exceptions to the rule above the rule itself. This does not mean that Schmitt overlooks how legal rules are formulated and implemented; since it is not possible to contemplate the exception without due consideration to the structure of the norm. “The political premium,” Schmitt notes in discussing the normal and exceptional conditions of law, “is relatively calculable in peaceful and normal times; in abnormal times, it is entirely incalculable and unpredictable.”⁸ Supralegality refers to a situation in which the normal boundaries of law no longer constrain and law must rely upon the “political surplus” that emerges from this exceptional situation. This “political surplus,” as Schmitt refers to it, accrues to the holder of state power and refers to a situation in which normal power gives way to extraordinary power. Or, as argued by Schmitt, “the mere possession of state power produces an additional political surplus apart from the power that is merely normative and legal, a supralegal premium on the lawful possession of legal power and on the achievement of a majority that lies beyond any normative consideration.”⁹

This ‘political surplus’ bears a close resemblance to the account of sovereignty developed within *Political Theology* in which Schmitt states the “exception in jurisprudence is analogous to the miracle in theology.”¹⁰ Under normal legal conditions supralegality

⁸ *Ibid.*, p. 32.

⁹ *Ibid.*, pp. 31-32.

¹⁰ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, (Cambridge, MA: MIT

possesses a secret, hidden life; yet when exceptional legal conditions develop, supralegalism is called upon to determine the final distribution of authoritative power. Schmitt notes that supralegalism is characterised by three interrelated characteristics, each of these reinforcing the difficulty of choice under exceptional conditions.

The first involves the deployment of a specific vocabulary to express the “undetermined and evaluative” nature of the legal situation.¹¹ The normal legal situation does not depend upon evaluative judgments in relation to the authoritative distribution of power. The exceptional legal situation must invoke the language of the “momentary situation” to perform the task of supralegalism: “public security and order,” “danger,” “emergency,” “necessary measures,” “hostility to the state,” and “life and death issues.”¹² The second involves the presumption that “the legal holder of state power” has a presumption in favour of legality under the exceptional legal situation. Difficult political circumstances, Schmitt suggests, tip the balance of legality in favour of the existing state power.¹³ The third relates to the immediacy of the exceptional legal situation. The exceptional legal situation represents an immediate challenge to the constitution and, as such, requires immediate resolution. Schmitt suggests that the very immediacy of the supralegal situation means that the normal processes of conflict resolution – judicial review and protections – can be suspended. “[T]he directives of the legal order of state power,” Schmitt claims, “are directly executable in the immediate instance, even when opportunities for legal challenges and judicial protections are provided.”¹⁴ Supralegalism – as a descriptor of the exceptional legal situation and an adjudicatory legal framework in periods of constitutional crisis – outperforms all other forms of law. Executive power, Schmitt advises, provides the most responsive mechanism for the restoration of order

Press, 1985), p. 36.

¹¹ Carl Schmitt, *Legality and Legitimacy*, p. 32.

¹² *Ibid.*, p. 32.

¹³ *Ibid.*

¹⁴ *Ibid.*

within a state. This leads Schmitt to declare that in a race between the executive and judiciary “the judiciary will mostly arrive too late.”¹⁵

Supralegality involves a ‘political surplus’ unlike all other forms of law because it is not bound by the set rules of the constitution nor by the specific provisions contained within a given piece of legislation. Supralegality also rejects, in the name of the exceptional legal situation, deliberative democracy as a solution to the problem of state disorder. The principle of ‘equal chance’ does not satisfy the objective of resolving conflicts over the holding of state power. On the contrary, the principle of ‘equal chance’ can provide grounds for constitutional crisis according to Schmitt. If all think they have an ‘equal chance’ to the legal holding of state power, then it can be claimed that only some are thereby enabled to achieve this legal holding of state power. Put simply, somebody must lose. And that somebody, Schmitt intimates, is the potential enemy of the constitution. The very entrenchment of ‘equal chance’ means that disaffected parties – those who have been unsuccessful in the competition for state power – are likely to look upon ‘equal chance’ as a substantive claim about political right rather than an arguably narrow right related to the competition for state power. “I have a right to compete for state power” is translated into the substantive claim “I have a right to hold state power.”

Schmitt is unconvinced about the capacity of normal law to generate a solution to the problem of order in the exceptional legal situation. In the case of conflict, to paraphrase Schmitt, who is authorised to remove doubts and resolve differences of opinion?¹⁶ Schmitt claims that legality cannot be used to solve or resolve questions about supralegality. Legality is insufficient because it is unable to provide a remedy to constitutional crisis. Its constitutional focus is borne out of the imperative of ‘equal chance’ (groups vying for state power) and, in so doing, is unable to exclude those parties seeking state power through treachery and deceit. The Schmittian constitutional dilemma

¹⁵ *Ibid.*

¹⁶ *Ibid.*, pp. 33-34.

can be summarised thus: in order to ensure that legality does not open the door to illegality limits must be placed on the conditions of access to formal state power within the constitution. This leads Schmitt to claim that “[t]he concept of legality inherits the situation established by princely absolutism: specifically, the elimination of every right to resistance and the “grand right” to unconditional obedience.”¹⁷

Schmitt, as defender of the principle of “grand right,” seeks to immunise the constitution from those who would seek to replace “grand right” with “equal right.” The ethos of the jurisdiction state (where judges exercise the right to final decision) and the legislative state (where legislation embodies the final decision) are predicated upon a false understanding of the origin and extent of political right. Adjudication within the jurisdiction state seeks to keep out non-judicial, political power according to Schmitt.¹⁸ Yet in the extraordinary legal situation, where ambiguity abounds, juridical resolution of the extreme emergency proves futile. The capacity of the legislative state to adjudicate in such a situation is also called into question by Schmitt. Since legislation represents the collective will of democratically elected lawgivers, legislation within the legislative state amounts to nothing more than a temporal snapshot of the dominant power-groupings within a constitution.

Neither the jurisdictional state nor legislative state can attain a situation of supralegality, the necessary accompaniment to the Schmittian imperative of “grand right.” This “grand right” is only achievable when the lawmaker is able to exercise a monopoly in relation to the final decision. Judicial and/or legislative norms are not sufficiently constituted to operate in terms of this final norm. This is owing to the fact that their respective conceptions of legal order value ‘law’ more highly than ‘right.’ If the conditions of legality depend upon the ebb and flow of the lawmaker and the lawmaking process, then

¹⁷ *Ibid.*, p. 10.

¹⁸ In questioning the capacity of the jurisdiction state to adjudicate in abnormal circumstances Schmitt is also attacking the principle of judicial neutrality, specifically the demand that legality be separated from political forces, considerations, and persons. *Ibid.*, p. 8.

law has divorced itself from considerations of political right. Schmitt is adamant that no matter how dignified or majestic a constitution sets out to be, its constitutional force derives from its ability to establish an authoritative structure for decision-making.¹⁹

6.4 Legality and the substance of democracy

Legality that honours the concept of “great right” thereby sits uneasily with democratic traditions of law making. Legality within the parliamentary legislative state rests upon the convergence between ruler and ruled; or as expressed by Schmitt, *lex est, quod populus jubet*.²⁰ Since parliament rests upon the majority decision (in contradistinction to the decision borne out of political right) legality is regarded by Schmitt as the “the will of a transient majority of the voting citizenry.”²¹ A majority decision is thereby deemed just and lawful when it reflects the people’s will. The democratic conception of legality invests huge faith in the capacity of democracy to generate a final decision. Thankfully, the need for a final decision is rare within political society but when needed it must prove itself capable of withstanding internal constitutional crisis and defying external threats.

Schmitt’s contempt for democratic forms of lawmaking stems less from his contempt for democratic norms (after all, Schmitt is the theorist *par excellence* of strong democracy) and more with the fact that constitutional democracy has enacted a false conception of equality within contemporary state systems. It was noted previously that Schmitt’s hostility to the Weimar Constitution related to a concern that parties, under the banner of democracy, could pursue legal means to undermine the fabric of legality within a political system. Schmitt’s concern is that the Weimar Constitution’s endorsement of the principle of neutrality resulted in a flattened concept of law. Law, in assuming a neutral posture, is procedurally advanced yet substantively enfeebled. Related to this neutrality is the

¹⁹ Schmitt’s disdain for administrative law is representative of his aversion to procedural conceptions of law. Administrative law, according to Schmitt, is a “pointless theoretical game lacking firm boundaries.” This is because its concept of legality is more concerned with the implementation of decrees rather than substantive formulations of law. *Ibid.*, pp. 21-23.

²⁰ *Ibid.*, p. 24.

²¹ *Ibid.*

inability of law to discriminate between persons with a valid claim to political right (lawful subjects) and those who would seek to remake legality according to their own self-image (unlawful subjects).

Whilst Schmitt does not specifically use such terms, the latent understanding is that democratic forms of lawmaking prematurely extend legal and political autonomy to subjects. Since law is neutral, paying little heed to the factional divisions within states, no procedure exists to deny the enemy access to the constitutional system. It is impossible, Schmitt suggests, for law to be neutral unto itself.²² Law which is “rooted in arithmetic understandings of the majority” are compelled to overlook the imperative of democratic consensus and, paradoxically, institute a matrix of majority/minority power relations.²³ Schmitt thinks that there should be no minorities within a democracy. Democracy, in his own words, “rests on the presupposition of the indivisibly similar, entire, unified people.”²⁴ If a parliamentary legislative state is to enact laws on the basis of democratic norms, then the national community should be indivisible and homogenous. Yet if the legality of constitutional measures is merely dependent upon securing a majority of 51 percent then democratic consensus is fictitious.

Schmitt argues that legality should not just depend on arithmetic calculability but should derive from substantive insights into the foundations of political right. If a democracy is to develop forms of legality in accordance with the principle of a simple majority – 51 percent – then it runs the risk of establishing a permanent minority within the state. Such minorities are rarely conducive to democratic functioning, establishing a permanent enemy does little to ensure the longtime viability of the constitution. Equipping that enemy with the political venom to undo constitutional norms is doubly as foolish in Schmitt’s judgement. This leads Schmitt to claim that “[i]f the parliamentary body is made into a mere function of general majority elections; and if majority decision

²² *Ibid.*, p. 27.

²³ *Ibid.*

²⁴ *Ibid.*, p. 28.

constitutes law, but without regard to the qualities of its members and in disregard of any substantive requirement of law; then all guarantees of justice and reasonableness, along with the concept of law and legality itself, end in an internally consistent functionalist view without substance and content that is rooted in arithmetic understandings of the majority.”²⁵

Law that disregards the substantive (how law is constituted normatively) in favour of the procedural (how laws can be deployed for the sake of process) experiences a reduced legality. Schmitt thinks that law within a parliamentary legislative state is little more than “empty functionalism.”¹ This is because a concern for constitutional neutrality – everybody having a chance to compete for state power – damages the capacity of the state to be authoritative. Schmitt attacks the parliamentary legislative state, and by implication liberalism, for thinking that democracy can do its work without recourse to the central political concepts of governing and governed, commanding and obeying.² Thus, mastery and dominion is a necessary precondition of suprallegality.

If neutrality within the parliamentary legislative state impairs the ability of the lawmaker to adjudicate between lawful and unlawful claims to state power then it also, in Schmitt’s opinion, renders hopeless any attempt at moral judgement. Strangely, for Schmitt, this means that the terms justice and injustice are devoid of moral content. This is because configurations of justice are subject to the will of the majority without due consideration to the normative order of justice itself. The significance of this is not necessarily that ‘justice talk’ is deprived of its rightful place within a constitutional system; rather, that this system of legality entrenches divisions within a constitution. “Whoever controls 51 percent,” Schmitt contends, “would be able to legally render the remaining 49 percent illegal.”³ Within a democracy the foundations of legality ought to rest upon the consent

²⁵ *Ibid.*, p. 27.

¹ *Ibid.*, p. 28.

² Schmitt argues that under this neutrality “[t]he democratic identity of governing and governed, those commanding and those obeying, stops.” *Ibid.*

³ *Ibid.*, p. 30.

of the entire political community. The parliamentary legislative state, in linking legality to parliamentary majorities, undermines the democratic potential of political community. This is because the majority party establishes itself as the state and consequently ceases to be a party.⁴

Schmitt argues that what matters most in a parliamentary legislative state is “the principle of an equal chance to win domestic political power.”⁵ Since this system has obliterated the distinction between ruler and ruled, commanding and obeying, it is Schmitt’s belief that there exists no mechanism to put an end to fractures across the political community. On the contrary, the parliamentary system entrenches division, allowing the malcontent to threaten the homogeneity which Schmitt regards as essential to authentic political community. The principle of ‘equal chance’ is forsaken as soon as the majority party takes control of legality: “They [the majority party] have a monopoly over the validity of statutes and their execution as well as over the production and sanction of legality.”⁶

That Schmitt should be critical of the fact that legality is *produced* and *sanctioned* by a corporate entity is noteworthy, especially in light of his previous endorsement of Hobbesian legal positivism. Schmitt’s concern is not necessarily that legality is *produced* and *sanctioned*; rather the concern is that under the parliamentary system the dynamics of legality are corrosive to political order. Legality is dispossessed of its final power since there is no ‘supraparliamentary’ or ‘suprademocratic’ body to adjudicate in instances of constitutional discord.⁷ Neither a simple majority (51 percent) nor a complex majority (two-thirds) can perform the role of a higher third party. A higher third party is needed to adjudicate conflicts between government and opposition where the rules are deemed insufficient according to Schmitt. When both government and opposition, in their words

⁴ *Ibid.*, p. 31.

⁵ *Ibid.*, p. 33.

⁶ *Ibid.*, p. 31.

⁷ *Ibid.*, p. 34.

and deeds, assume guardianship over legality then legality itself cannot resolve such constitutional impasse.⁸

The Schmittian objective of political order, especially the demand for homogeneity, demonstrates Schmitt's reluctance to allow liberal norms to permeate democratic norms. Schmitt's thick account of democracy accords normative significance to homogeneity; in short, the democratic presupposition *is* homogeneity.⁹ This leads Schmitt to argue that "if democracy is to flourish, every vote has the sense of bringing about agreement, as a mode of confirming the unanimity that must always be present at a lower level, instead of an agreement in the form of a majority voting down, dominating, and violating a minority."¹⁰ That Schmitt should be so worried about the status of minorities reveals how central homogeneity is to the Schmittian project.

Exclusion is a very real concern for Schmitt, not because of an ethical orientation concerned with philosophies of difference. Exclusion is an issue because it erodes the primary political objective of democratic community: namely, homogeneity. Exclusion is the outcome of the liberal preoccupation with *equal chance* and thereby undermines the Schmittian foundations of authentic political community. This anti-pluralist theme, developed forcefully in *The Concept of the Political*, returns to the fore in Schmitt's discussion of the quality of democracy under the parliamentary legislative state. With the state reduced to heterogeneous power groupings, the state becomes a site of struggle rather than the expression of *the* collective will. Legality suffers under these conditions; its authoritative ethos is undermined through the emergent power groupings. Democracy, in short, is deemed by Schmitt to be inoperable if sustained by a discourse of majorities *versus* minorities.

⁸ Schmitt expresses concern that at such a "critical juncture, each denounces the other, with both playing the guardian of legality and the guardian of the constitution. The result is a condition without legality or a constitution." *Ibid.*, p. 34.

⁹ Schmitt is adamant that neither simple majorities nor complex majorities satisfy the conditions for democratic homogeneity. See, for example, his discussion on the two-thirds majority where he claims that an additional 15 percent does not make the decision more conclusive. *Ibid.*, pp. 40-41.

¹⁰ *Ibid.*

Substituting *simple* majorities for *complex* majorities will only be palliative in Schmitt's view. Contrary to liberal thinking, democratic legitimacy is not extended by increasing the volume of public opinion affirming a specific statute or regime. What emerges instead is a "dangerous, stronger majority" to engender greater mistrust of the dominant power grouping.¹¹ The consequence for law is that legality becomes the "momentary compromise of heterogeneous power groupings."¹² This has grave consequences for the constitution itself; since the constitution is assumed to rise above the petty squabbles of the political community. If the constitution becomes a site of "godless cultural radicalism" then the value neutrality of the constitution is forsaken.¹³ The irony, for Schmitt at least, is that in the name of value neutrality the constitution participates in its own colonisation by partisan groupings.

This colonisation is the direct result of the parliamentary legislative state's fixation with value neutrality. Schmitt thinks that this value neutrality results in the refusal of a legal order to adapt to changing circumstances:

When this form of value neutrality is the dominant and "traditional" theory, there are no unconstitutional goals. Any goal, however revolutionary or reactionary, disruptive, hostile to the state or to Germany, or even godless, is permitted and may not be robbed of the chance to be obtained via legal means. Any limitation of or restraint on this opportunity would be unconstitutional.¹⁴

Value neutrality is therefore akin to 'system suicide.'¹⁵ Schmitt relates this specifically to Article 76 of the Weimar Constitution which he argues entrenches the unconditional equal chance as a constitutional norm. This means that no organisation, group, party or association can be deemed illegal on the basis of their political content or ideological

¹¹ *Ibid.*, pp. 43-44.

¹² *Ibid.*

¹³ *Ibid.*, p. 46.

¹⁴ *Ibid.*, p. 48.

¹⁵ *Ibid.*

platform. Value neutrality, Schmitt declares, means “anything is legal.”¹⁶ So long as groups remain within the confines of the constitution, especially by upholding the procedural legality concerning the attainment of state power, then there is nothing stopping these groupings from using legal means for the purposes of illegality. A constitution devoid of value commitments precludes the possibility of substantive legality from emerging. Without a sense of what is important for the political community, expressing the legal direction of that same political community, then procedural legality presides tenuously.

6.5 What type of constitution?

Schmitt distinguishes between constitutions which possess “organizational-procedural regulations” and those constitutions which contain “extensive entrenchments and guarantees in the form of substantive law.”¹⁷ Schmitt is concerned that under the guise of procedural regulations a parliament may use its simple or complex majority for the purpose of entrenching new forms of substantive law. Since this substantive law reflects the will of the majority rather than the authentic will of the political community, its value as substantive law is politically diluted. Schmitt is concerned that ordinary statutes may be granted constitutional status if procedural legality is allowed to regulate the legal holding of state power.¹⁸

The legislature may try to shake off allegations of constitutional activism through the use of public referenda. If it does this then the executive has opted for plebiscitary justification over parliamentary justification. The use of referenda as part of a system of ‘constitutional guarantee’ involves the executive surrendering control of legality to the political community. It does not, however, resolve Schmitt’s concern about the entrenchment of permanent and/or transitory groupings within the political community itself. Nor does it meet the requirement of suprallegality, as stated above, in relation to the

¹⁶ *Ibid.*

¹⁷ *Ibid.*, p. 57.

¹⁸ Schmitt argues that by “lending statutes constitutional status, the statutory reservation solidifies substantive law and the acquired rights of particular groups.” *Ibid.*, pp. 56-57.

authoritative distribution of final power. The use of referenda also signals the lack of faith that the parliamentary legislative state, and its electors, have in the system of procedural legality. By substituting parliamentary justification for plebiscitary justification the source of legality may have changed but the dilemma of substantive law within the constitution remains the same. *How is it possible for substantive legality to be achieved when the system of legality – whether parliamentary or plebiscitary – only works in accordance with procedural legality?*

If both legislative and plebiscitary justification are deemed insufficient for the task of establishing substantive law within a constitution, then Schmitt looks to a third lawmaker for the authoritative distribution of final power. The third lawmaker embodies a different type of legality compared to that of the parliamentary and plebiscitary lawmakers. The parliamentary lawmaker, Schmitt details, is concerned primarily with the material dimensions of legality.¹⁹ Plebiscitary law is the reflection of a majority judgement within the political community. The third lawmaker, contrastingly, is the extraordinary lawmaker embodying *ratione temporis ac situationis*. The third lawmaker transcends both parliamentary and popular sovereignty in pushing legality towards its substantive conclusion.

The third lawmaker is not limited by the perceived constraints of proceduralism and, as such, can be identified as the very embodiment of supralegality. The third lawmaker, described by Schmitt in terms of *ratio necessitatis*, is endowed with privileged access to legal knowledge. This is largely due to the fact that this lawmaker is allowed to surpass the limits of proceduralism – chiefly the requirement of equal chance – by contemplating the substantive dimensions of legality *in extremis*. The third lawmaker does not accept the ‘medicinal lie’ that informs procedural understandings of legality. Such procedural legality reduces law to neutral forms of adjudication informed by objective conditions or truths. Schmitt is resolute in declaring that such law is only valid for normal conditions. The third lawmaker, on the other hand, can move beyond the ‘medicinal lie’ of

¹⁹ Schmitt suggests that this legality is illustrative of *ratione materiae*. *Ibid.*, p. 69.

procedural legality owing to the recognition that law is *created* not *discovered*. “In the third extraordinary lawmaker,” declares Schmitt, “the simple truth of legal scholarship becomes evident through all the normative fictions and obscurities: that norms are valid only for normal situations, and the presupposed normalcy of the situation is a positive-legal component of its ‘validity.’”²⁰

For Schmitt, the third lawmaker is superior to the Reichstag and, by implication, stands above the majority will. This relates to the fact that the ‘abnormal situation’ institutes a new order of legality. Neither parliamentary nor popular sovereignty can perform the task of supral legality in this ‘abnormal situation.’²¹ This means that basic, fundamental rights can be suspended for the purposes of attaining substantive constitutional objectives. Schmitt is remiss in not explicitly stating the background conditions that would give rise to such an ‘abnormal situation.’ The distinction between the legislature and the third lawmaker is described by Schmitt in terms of the following:

The ordinary legislature can intrude on the basic rights only on the basis of the statutory reservation. However, it cannot set them aside. The extraordinary lawmaker, by contrast, can do both and, apart from everything else, thereby surpasses the ordinary legislature and is superior to it in a novel way.²²

Schmitt thinks that he is honouring the ‘abnormal situation’ in keeping definitional questions off the agenda. If the ‘abnormal situation’ is truly abnormal it must, by its very nature, defy rigid definition. This means that the Reichstag cannot dictate the terms under which the third lawmaker may operate. Schmitt thinks that this is one of the fundamental problems of the Weimar Constitution; namely, the inability of the third lawmaker to achieve an authoritative status in relation to the Reichstag.²³ Schmitt argues that, in fact, the third lawmaker is legally superior to the Reichstag. A political community, especially

²⁰ *Ibid.*, p. 69

²¹ *Ibid.*

²² *Ibid.*, p. 74.

²³ See where Schmitt argues that according to “Article 48, 3, the measures of the third extraordinary lawmaker are subject to suspension on the demand of the Reichstag.” *Ibid.*, p. 69.

one predicated upon the principle of democratic homogeneity, must ensure that the constitution stands above the will of parliamentary and popular majorities. This leads Schmitt to endorse the right of the third lawmaker to amend procedural legal norms in defence of the constitutional good. This means that the third lawmaker may declare that “the basic rights are no longer an obstacle to his measures.”²⁴

Endowing the third lawmaker with the right to suspend basic rights reveals how mired in early modern thought Schmitt’s conception of sovereignty is. The third lawmaker, authorised under the constitution, is the embodiment of the Hobbesian image of the sovereign. The third lawmaker possesses a *supralegal* character in being called upon to adjudicate in times of supreme emergency. In doing this, the decrees of the third lawmaker must have the full force of law if substantive constitutional norms are to be safeguarded. The third lawmaker thereby suspends procedural legality, notably in relation to parliamentary and popular sovereignty, for the sake of the higher norm. Liberals would be correct in objecting to the dictatorial component in Schmitt’s thinking on the third lawmaker. That Schmitt thinks that normal legal service can be suspended and resumed at the will of the third lawmaker reinforces Schmitt’s status as anti-liberal.

Schmitt’s critique of liberalism within *Legality and Legitimacy* assumes that liberalism and democracy are incompatible legal traditions. For Schmitt, it is important to maintain a distinction between liberalism and democracy. Schmitt is troubled by the fact that many modern constitutions, especially the Weimar Constitution, emphasise the freedom of groupings to express themselves within political community. An emphasis on the free participation of rival groupings within a constitution entails a neglect of the foundations of political community in unity. The accommodation of rival conceptions of the good into the same constitutional framework undermines the unitary purpose of the constitution. The consequence of this is that the constitution is always exposed to fundamental divisions. This leads Schmitt to advocate a “logically consistent system of

²⁴ *Ibid.*, p. 73.

legality” within the constitution.²⁵ It simply is not possible to combine rival accounts of sovereignty – parliamentary, popular, the third lawmaker – into the same conceptual system.²⁶ Schmitt wants to draw attention to the fact that the parliamentary legislative state has lost its capacity to command due to the impact of pluralism (the principle of “equal chance”) in contemporary state theory and practice. A plurality of forces vying not only for state power, but also over legality itself, means that decision-making becomes hindered by ambiguity. “The current will of the present parliamentary majority,” Schmitt proclaims, “has long since only been based on a compromise of thoroughly heterogeneous power organisations, and the parliament has become the showplace of a pluralist system.”²⁷

Schmitt is concerned about the narrowing of democratic norms and processes under the influence of liberal understandings of the parliamentary legislative state. The use of complex majorities and popular referenda does not satisfy the conditions for strong, effective democracy. The principle of “equal chance” assures procedurally legality but largely overlooks questions concerning substantive legality, especially when substantive legality is contested under the principle of “equal chance.” Schmitt’s legal theory values adjudication above all other forms of legal reasoning. Rather than looking to pluralism for ensuring representative forms of governance, Schmitt accuses pluralism of weakness in matters of adjudication. This means that those parties committed to the principle of “equal chance” face a grave choice when legality is disputed. Schmitt depicts this dilemma in the following way: either give up your political existence or establish a right to resistance within the constitution.²⁸ The former thereby makes a mockery of “equal chance” since parties are compelled to submit to the will of the majority. Their status as free and autonomous choosers, as developed in Rawls’s neo-Kantian understanding of human agency, is thus eroded. Establishing a right to resistance is also deemed by

²⁵ *Ibid.*, p. 85.

²⁶ Schmitt argues that the inclusion of *ratione materiae*, *ratio suprematatis* and *ratio necessitates* into the same constitutional system endangers the parliamentary legislative state’s logically consistent of legality. *Ibid.*, p. 85.

²⁷ *Ibid.*, p. 87.

²⁸ *Ibid.*

Schmitt to endanger the democratic homogeneity of the political community. If all have a right to resist, then none agree to be subject to adjudication. Democratic norms are thereby undermined by the notion of “equal chance.”

Not only does the parliamentary legislative state abrogate its responsibility for constitutional adjudication but, equally as important, such a state flattens the quality of democracy. Schmitt is adamant that democracy is best attained via extra-parliamentary means.²⁹ Liberalism invests the bulk of its normative reasoning in publicly agreed rules about the processes of legality. Elections and referenda are said to constitute the highest form of democratic deliberation. But Schmitt thinks that these instances of democratic deliberation weaken democracy. This is because, in Schmitt’s own words, “[t]he people can respond yes or no.”³⁰ The citizen has restricted access to influence the domain of mastery and dominion:

They [the people] cannot advise, deliberate, or discuss. They cannot govern or administer. They also cannot set norms, but only sanction norms by consenting to a draft set of norms laid before them. Above all, they cannot pose a question, but can only answer with a yes or not to a question placed before them. If the people are presented with a series of party lists, instead of an answerable question, lists that, once again, are produced in the deeply obscure shadows of party committee; and if the government avoids posing a decisive question through parliamentary dissolutions; then the “election” process itself becomes pointless.³¹

Schmitt claims that for democracy’s work to succeed requires a strong leader to pose the decisively important political question. Schmitt has contempt for legal process that assumes “functionalist value neutrality, with the fiction of an indiscriminate equal chance for all contents, goals, and drives.”³² In posing the decisively important political question there is little scope for the principle of “equal chance” to have its say. Not everybody is

²⁹ See, for example, Schmitt’s *The Crisis of Parliamentary Democracy* where he claims that elections provide an inferior measurement of the popular will. The dictator, Schmitt suggests, is often more in touch with the needs of the political community than the electors themselves.

³⁰ *Ibid.*, p. 89.

³¹ *Ibid.*

³² *Ibid.*, pp. 93-94.

called, or enabled, to speak on behalf of the political community. Equal chance also means that all have a say in the formation of the decisively important political questions. Yet, for Schmitt, it is not evident that the right procedure has been found that will allow for political dialogue between groups within the parliamentary legislative state. Put simply, somebody will be left off the invite list when it comes to framing the decisively important political question.

Schmitt therefore calls for a clear separation between constitution and the “partisan legislative machine” in attempting to formulate and enact the decisively important political question.³³ When this question is managed by the “partisan legislative machine” it is no longer rooted in the constitutional requirements of democracy. Given the fact that pluralism actively encourages opposition, producing clumps of power across the state, the decisively important political question is tactical rather than democratic.³⁴ Schmitt thereby argues that “[n]either parliamentary legality nor plebiscitary legitimacy, nor some other conceivable system of justification, can overcome such a degradation to a technical-functional tool.”³⁵ With the constitution a site of partisan struggle the constitution is prevented from expressing the genuine needs of democratic community. No amount of legal fiction can make up for the fact that the constitution has allowed itself to be annexed by the partisan. “[N]o normative fiction of a “unity” can prevent warring factions from making use of that part of the constitution and constitutional text that they believe is best suited for knocking the opposing party to the ground in the name of the constitution.”³⁶

Schmitt is concerned that contemporary state systems, especially the parliamentary legislative state, have lost sight of the need for constitutional unity. The constitution should be in the service of democracy rather than in the service of “heterogeneous power

³³ *Ibid.*, p. 93.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

organisations.”³⁷ Schmitt illustrates this in relation to the Weimar Constitution which he claims is being forced to serve two sovereign masters and, in so doing, serves none. Schmitt argues that the Weimar Constitution is, in fact, two different constitutions with “distinct types of logical consistency, spirit, and foundation.”³⁸ There is the constitution devoted to questions of proceduralism and, in so doing, enshrines the principle of “equal chance.” There is also, in Schmitt’s opinion, a constitution which attempts to establish a “substantive order” of legality.³⁹ In the battle between these two constitutions Schmitt is clearly on the side of substantive legality.

6.6 Substantive legality vs. Procedural legality

The distinction between procedural legality and substantive legality demonstrates the significance of the divide between liberalism and democracy for Schmitt. In suggesting that substantive legality must necessarily trump procedural legality, Schmitt attacks the very foundations of liberal neutrality. “A constitution that would not dare to reach a decision on this question,” Schmitt declares, “one that forgoes imposing a substantive order, but chooses instead to give warring factions, intellectual circles, and political programs the illusion of gaining satisfaction legally, of achieving their party goals and eliminating their enemies, both by legal means, such a constitution is no longer even possible as a dilatory formal compromise.”⁴⁰ Without a strong democratic norm to regulate procedural norms the likelihood of civil strife is dramatically increased according to Schmitt.⁴¹ The lack of substantive order, allowing procedural legality free reign within a state, would “fail at the critical moment when a constitution must prove itself.”⁴²

³⁷ *Ibid.*, p. 87.

³⁸ *Ibid.*, p. 94.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, p. 93.

⁴² *Ibid.*, p. 94.

The role of constitution becomes strongly linked to the Schmittian concept of the political. Schmitt uses legality – procedural *versus* substantive – as a means of addressing the metatheoretical trajectory of the political. This trajectory, as noted previously, derives its methodological vitality from the friend/enemy distinction. Schmitt claimed in his 1958 afterword to *Legality and Legitimacy* to have been concerned with outlawing the “procedure by which a party enters through the door of legality, in order to close this door behind it.”⁴³ Schmitt regarded such a ‘legal world revolution’ as the preeminent threat to modern constitutions. Yet it becomes clear that what matters is less the foundations of legality than the possibility of the enemy gaining control of state power.

Schmitt suggests that a weak constitutional state, which lacks substantive norms in relation to law, allows for the enemy to gain legitimacy by competing for state power. Schmitt’s opposition to procedural legality is linked to the fact that “equal chance” opens up the constitutional door to the enemy. Schmitt seeks to deny the enemy, however constituted, access to state power. The rejection of procedural legality and endorsement of substantive legality takes place according to the rationale of keeping the enemy at bay. Pluralism, foremost its promotion of “equal chance,” is rejected outright. This rejection differs substantially from that contained within Schmitt’s *Concept of the Political*. Whereas Schmitt had earlier called for the elimination of pluralism from the polity on the basis that it erodes the capacity of the state to distinguish friend from enemy, the rejection of pluralism within *Legality and Legitimacy* is veiled in the discourse of legality. It is only in reflecting on the significance of the distinction between substantive legality and procedural legality that Schmitt’s ideological purpose is revealed. Pluralism, it would seem, allows for the “entry of every enemy as soon as this enemy emerged as a “workable governmental combination,” and, in this way, made itself legal.”⁴⁴ The discourse of legality is the carrier of the friend and enemy ethos. Devoid of the underlying friend and enemy ethos, Schmitt’s reflections on the normative status of legality would be theoretically useless.

⁴³ *Ibid.*, p. 95.

⁴⁴ *Ibid.*, p. 101.

Schmitt's claims about the dangers of the parliamentary legislative state are predicated upon the potentiality of crisis, not the actuality of state practice itself. When looking at constitutions Schmitt sees the potential of the parliamentary system to decay rather than the capacity of the constitution to provide a secure framework for governance. Schmitt has assumed that substantive and procedural legality occupy separate legal realms. Eliminating procedural legality from the constitution is Schmitt's way of resolving the question of final power within the state. Schmitt is so concerned with the onslaught of backdoor illegality, pursued entirely via legal means, that he comes out strongly in favour of the governmental state.

6.7 Open Legality vs. Closed Legality

Schmitt places the legislative state and the governmental state at opposite ends of the legal spectrum. The legislative state institutes a system of legality based on general, enduring norms. The content of the norm is, in Schmitt's words, "definable and determinable."⁴⁵ The legislative state thus represents a *closed system of legality*. This system of legality subsumes "factual circumstances in concrete cases" to procedural norms.⁴⁶ This stands in contradistinction to the governmental state which, if the logic of Schmitt's description of the legislative state is to be believed, strives towards an *open system of legality*. The difference between a *closed system of legality* and an *open system of legality* is not comprehensively addressed by Schmitt. The descriptors 'open' and 'closed' refer to the capacity of the state to absorb new norms in response to constitutional crisis. The governmental state institutes a system of substantive legality with "its characteristic expression in the exalted personal will and authoritative command of a ruling head of state."⁴⁷

⁴⁵ *Ibid.*, p. 5.

⁴⁶ Schmitt argues that "[t]he typical expression of the legislative state is the predetermined, enduring, general norm, substantively definable and determinable. In the course of the application of such a norm, the juridical decision shows how all state life generally should be comprehended from a closed system of legality made possible by the subsumption of particular factual circumstances in concrete cases." *Ibid.*

⁴⁷ *Ibid.*, p. 5.

The governmental state appeals to the very core of the Schmittian political ethic, especially in regards to the identity and role of the sovereign. Direct from the Hobbesian textbook, Schmitt identifies the following in relation to the sovereign: “The sovereign is the highest legislator, judge, and commander simultaneously. He is also the final source of legality and the ultimate foundation of legitimacy.”⁴⁸ Schmitt’s unqualified support for the sovereign, allowing for the suspension of basic rights, celebrates strong governance above all other forms. Forms of governance whose legality depends upon the balancing of interests – judicial, administrative, and/or legislative – are deemed to lack the necessary authority to determine the correct distribution of final power within a state. Schmitt’s hostility towards the administrative state, in which “things administer themselves,” is related to the fact that in terms of the norm it represents the *closed system of legality*.⁴⁹ This system of legality can be described as *closed* for the reason that its conception of legality is about rule following rather than testing the application of the norm to the concrete situation. Within the administrative state, Schmitt contends, the administrator “does not seek the mere application of higher norms, but rather only objective directives.”⁵⁰ Legality is disempowered within the administrative state since it lacks the authoritarian personality conducive to legality.⁵¹

The sovereign is the embodiment of the *open system of legality* put forward by Schmitt. With scant restrictions on the exercise of state power, the sovereign is the “final source of legality” in providing the “ultimate foundation of legitimacy.”⁵² This *open system of legality* proves itself in the exception when it is called upon to restore order. The price of order within the state is the selective suspension of the procedural norm. This differs

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, p. 5

⁵⁰ *Ibid.*

⁵¹ Schmitt claims that within the administrative state “command and will do not appear authoritarian and personal.” It is important to note that Schmitt is giving a positive spin to the term ‘authoritarian.’ This has important ramifications for his concept of legality. Legality, if it is to qualify for legality, must be authoritarian. *Ibid.*

⁵² *Ibid.*

greatly from a *closed system of legality* where decisions are filtered through pre-established, general norms.

Schmitt claims that *Legality and Legitimacy* “was a despairing attempt to safeguard the last hope of the Weimar Constitution, the presidential system, from a form of jurisprudence that refused to pose the question of the friend and enemy of the constitution.”⁵³ Schmitt, in this respect, regards himself as the defender of substantive constitutional norms within the Weimar state. Schmitt thinks that procedural norms can be dropped according to the dictates of the third lawmaker. In this respect, Schmitt treats fundamental, basic rights as procedural norms rather than substantive ones. In doing this, Schmitt thinks that rights can be suspended in the furtherance of the friend-and-enemy grouping. This juridical approach to the political thinks that norms can be suspended with little consideration of their potential impact on subjects. Since Schmitt regards the political as a value above all other values this means sovereignty is assessed in terms of mastery and dominion: that is, the capacity for the sovereign entity to unilaterally suspend the norm.

6.8 Enforcing the norm or beyond the norm?

The concern with Schmitt is not that he rejects procedural legality, since there are potential benefits in testing the boundaries of proceduralism. The chief concern is that Schmitt treats fundamental rights as surplus to constitutional requirements. Normal law is expected to make way for the exceptional legal situation. When legality is not contested – when norms are publicly accepted and procedurally implemented – then fundamental rights are allowable under the constitution. When legality is contested – when norms no longer provide a structure for order and legality – then fundamental rights can be dissected according to the will of the third lawmaker. Normal law is the carrier of fundamental rights, but such rights are necessarily inferior to the requirements of the higher, substantive law. The distinction between formal and substantive law,

⁵³ *Ibid.*, p. 95.

outlined above, is closely related to Schmitt's understanding of the qualitative differences between normal and exceptional law. Formal law is understood by Schmitt to embody legality that is functional and neutral. Substantive law, on the other hand, is regarded by Schmitt as *the* enduring form of legality. This is because it embodies a higher form of legality, valuing democratic homogeneity (and the identity of the political community) above all other constitutional norms.

Put simply, formal law *follows* the norm; substantive law *enables* the norm. The distinction is significant when assessing the role of the state within Schmittian legal ethics. Since the objective of supralegality is establishing a system of adjudication that will withstand the uncertain legal foundations that beset the parliamentary legislative state, then formal law finds its *raison d'être* in a strong state. To the extent that where substantive law is swamped by formal law then the very survival of the state is called into question. "In such a system," Schmitt argues, "one can hardly still speak of the 'state' because there is a mere nonpolitical community in place of a political unity, at least according to the fiction."⁵⁴ A system of legality that can only acknowledge the formal aspects of law thereby endangers the political unity of the state. And, since the Schmittian conception of the state is predicated upon democratic homogeneity, there is a real need for the state to establish its claim to legality above and beyond the forces of plurality that the principle of "equal chance" under liberalism establishes.

The need for an authoritative state is a necessary precondition of Schmitt's account of supralegality. The power of the final decision is the *sine qua non* of Schmittian state theory. If the final decision can only express itself through intermediaries – the judiciary, the parliament, the administrators – then its claim to finality is severely undermined. Schmitt's decisionism is not open to deliberation and democratic contestation. Proceduralism fails to respond to the exceptional legal situation because its conceptions of law and justice develop with the objective of securing an "unambiguous content."⁵⁵

⁵⁴ *Ibid.*, p. 7.

⁵⁵ *Ibid.*, p. 8.

This means that the need for “intervening norms” or overarching norms must be kept at a minimum. Legality should regulate itself without the need to refer to higher norms (or the norms of a third lawmaker). What results is a procedural understanding of legality in which background patterns of justification – especially conceptions of political right – are omitted from the adjudication process. The role of the constitution within the state is to advance conceptions of legality that regulate themselves according to the “rule of law.”⁵⁶

6.9 Partial Rationality vs. Universal Rationality

The challenge of the “rule of law” is to find the correct procedure to ensure that its judgements are not partial reflections of a fractured polity but true representations of the will of democratic political community. If the “rule of law” becomes the plaything of plural, competing groups (as Schmitt foresees in relation to liberalism) then it has lost its capacity to decide. Since law is no longer embedded in the state, but subject to the forces of pluralism, then its starting premise of impartiality is not only infeasible but the very Achilles’ heel of procedural legality. The requirement of impartiality is present in John Rawls’s *A Theory of Justice*. A Rawlsian resolution to this problem of justice is the veil of ignorance. Rawls is relevant to the current discussion because he presents the problem of justice as one of instituting the right procedure for the redistribution of social goods within a political community. This approach to justice places the emphasis on the rule of law and the capacity of free actors to choose the right conditions for justice. “Among the essential features of this situation,” Rawls states, “is that no one knows his place in society, his class position or social status, nor does one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like.”⁵⁷

Schmitt would be dissatisfied with the Rawlsian resolution to the problem of justice. This is partly because the Rawlsian conception of the autonomous subject – derived largely from Kant – is at odds with the strong communitarian ethic of Schmitt. Schmitt’s *telos* is

⁵⁶ *Ibid.*, pp. 20-21.

⁵⁷ John Rawls, *A Theory of Justice*, (Oxford: Oxford University Press, 1973), p. 12.

political community itself; Rawls's *telos* is open, just institutions to secure conditions for autonomy.⁵⁸ Rawls wants to ensure that the conditions of justice are compatible with the different roles and standpoints played by members of a political community. In this endeavour, Rawls places the emphasis on constitutionality as the means by which a political community is regulated. Rawls thinks that it is rational for subjects to opt for the optimal institutional conditions of justice, Schmittian legal theory advises that neither an institutional fix nor a constitutional fix will enable liberalism to secure the conditions for justice.⁵⁹ Justice cannot escape the dynamics of pluralism. For Schmitt, a plural constitution, pursuant of the principle of "equal chance," is a divided constitution.

Rawls thereby attempts to delink *interests* from the character of justice within liberal society. Schmitt deems such a goal unattainable. With a plurality of forces vying for state power, under the mantra of "equal chance," the possibility of turning justice into a universal norm rather than a partial norm is forsaken. *Realpolitik*, especially when its root assumptions are derived from Hobbesian arguments concerning the human passions, does not allow for the universalisation of interests. Such universalisation of interests requires rational, liberal subjects to surrender their *interests* before the altar of a godless, universal rationality. Yet Schmitt believes that universal rationality is inescapably cloaked in the *interests* of each liberal subject; or the corporate groupings that profess to represent the plural types of liberal subject.

⁵⁸ For Rawls's statement of the relationship between the Kantian conception of autonomy and the principle of justice see *A Theory of Justice*. Rawls argues that "[f]ollowing the Kantian interpretation of justice as fairness, we can say that by acting from these principles persons are acting autonomously: they are acting from principles that they would acknowledge under conditions that best express their nature as free and equal rational beings." *Ibid.*, p. 515.

⁵⁹ See where Rawls argues that the principles of justice chosen in the original position are "collectively rational." Since parties to the chosen principles of justice have come to a decision then "just institutions are collectively rational and to everyone's advantage from a suitably general perspective. It is also rational for each to urge others to support these arrangements and to fulfill their duties and obligations." Rawls thinks that by delineating the principles of justice that the desire for justice becomes *rational*. This leads Rawls to claim that "being rational for one, it is rational for all, and therefore no tendencies to instability exist." *Ibid.*, p. 567.

If universal rationality is to succeed within the constitution, and by implication to obtain mastery over the state itself, then it must proceed from shared understandings of what it means to be rational. Schmitt thinks that the pluralistic party state [*pluralistic Parteinstaat*] is devoid of 'logical consistency' because its endorsement of pluralism culminates in a "will to inconsistency."⁶⁰ This inconsistency is both ontological and teleological. That is to say, the starting point of "equal chance" promises to democratise the holding of state power. In reality, however, "equal chance" results in the consolidation of state power on the basis of the simple and/or complex majority. In taking "equal chance" as the measure of democracy, the liberal supports a divided constitution. Democratic homogeneity, the Schmittian yardstick of democracy, is foreclosed. In so doing, universal rationality (the constitutive rationality of the political community itself) must be abandoned in favour of a partial rationality (the constitutive rationality of sectional interests to the detriment of political community).

Rawls wants to give liberal rationality a foundation in the universal. The purpose being to give liberal subjects the best hope of securing an understanding of justice which transcends the contextual specificity of their placement within a liberal society. This would mean that justice could escape being hijacked by sectional interests within the political community. Schmitt's critique of liberal constitutionalism challenges the Rawlsian image of political community as made of plural groupings. This is owing to the fact that the principle of "equal chance" cannot be isolated from the individual positions that subjects will occupy under a liberal constitution. Pluralism, whether subject to regulation or not, unavoidably culminates in partial forms of justice and legality. That justice within the liberal state must be regulated through a theoretical sleight of hand, in the form of the Rawlsian original position, attests to the weakness of legal norms under liberalism.

Schmitt's project is thus to denounce constitutional forms that champion a *closed system of legality* above an open one. A closed system of legality, it should be noted, can be

⁶⁰ Carl Schmitt, *Legality and Legitimacy*, p. 88.

defined as one which institutes checks and balances in relation to the legal holding of state power. This is because the task of supralegalty – the authoritative distribution of final power – is far too important to be left to intermediaries within the state. The *supra* dimension of supralegalty also suggests that the determination of final power within a constitution should transcend the sectional, partisan interests that Schmitt sees as dominating the pluralist state system. Supralegalty pushes the concept of legality beyond the norm; law is no longer ontologically grounded in publicly agreed rules concerned with the boundaries of state vis-à-vis the individual.

Supralegalty reinforces Schmitt's preoccupation with the autonomous foundations of law and the political. Legality that soars above and beyond everyday norms is the decisive norm according to the Schmittian legal universe. Schmitt brings a new twist to the question of order. This anti-functionalist approach judges legality by its capacity to impose a structure of order when norms have been discredited. For it is when functionalist understandings of law, legality, and the state are finally set aside that the true extent of legality can emerge.

In articulating the need for a third lawmaker – the supralegal one who is neither judge nor politician – Schmitt appears to have neglected the legal positivism of Hobbes. Hobbes, as it was argued in the Chapter 5, should not be dismissed in Straussian terms for lowering the threshold of human excellence. But, on the contrary, Hobbes should be applauded for insisting that law is a fabrication for order. Law is not order but a story about how order can be achieved. Schmitt thus appears to have deserted legal positivism in favour of legal absolutism.

7

Conclusion: Beyond the juridical moment

7.1 The juridical legacy: mastery and dominion

Carl Schmitt's account of the political is a consequence of the juridical framing of the world in terms of relations of mastery and dominion. The preceding sections have endeavoured to demonstrate how Schmitt's understanding of the political depends on the existence of an authoritative entity for the final determination of division and difference within a political community. This juridical legacy is long entrenched in the history of modern political thought. In this regard, the Hobbesian claim that substantive notions of *right* and *wrong* are impossible without dominion is relevant in assessing Schmitt's contribution to contemporary political theory. The concepts discussed in the preceding sections – sovereignty, legality, and legitimacy – all involve the establishment of an authoritative order in order for them to do their work. Sovereignty without dominion, legality without an authority entity, and legitimacy without a higher lawmaker are core assumptions of Schmitt's juridical approach to the political.

The displacement of the juridical from the political is not the primary objective of the current work. Nonetheless, an awareness of the underlying ethic within Schmitt's legal and political theory can generate a way of looking at the political which does not depend *exclusively* on the authoritative entity for the determination of all things political. Schmitt's autonomy thesis—where the political obtains mastery vis-à-vis all other domains—reduces the political down to a rigid system of value and, in so doing, constructs the political in terms of the concrete friend-and-enemy grouping. This Schmittian approach to the political establishes ethics as the antithesis of politics, rejecting implicitly attempts to reconfigure the frameworks of knowledge and conduct in the domain of the political.

Schmitt's revival has placed definitional questions of politics on the agenda of contemporary political theory. Recasting Schmitt's juridical account of the political is not

the normative project of the current work. To do so would require a heroic effort to reconfigure political knowledge and, in so doing, would itself involve an ethic of mastery. This thesis calls for an eternal questioning of the political. What is coded as ‘politics’ and ‘the political’ would be subject to an eternal questioning, allowing new spaces for subjectivity to flourish. This would involve an awareness of the limits of self-knowledge. Achieving an awareness of the limits of politics does not involve the rejection of the concept of politics but an appreciation for how the boundaries of “the political” change through time and space. In this regard, this thesis calls for a constitutive understanding of the political which acknowledges how the subject is formed by politics and how the subject forms politics. Judith Butler expresses this in terms of the opaqueness of the subject: “If the subject is opaque to itself, it is not therefore licensed to do what it wants or to ignore its relation to others.”¹

7.2 Constitutive subjects, constitutive politics

Judith Butler’s thought provides a focal point for thinking of politics in terms of constitutive foundations rather than autonomous foundations. Butler offers a powerful critique of mastery and dominion in liberal thought, specifically in relation to the foundations of the liberal subject. The liberal subject has traditionally been regarded as one who, individually, determines the field of action within a life. Butler calls for a relational rather than a unilateral understanding of the subject; in so doing, political subjectivity is less about *mastery* and *dominion* and more about the way in which subjects relate to each other. With the subject no longer conceived *unilaterally* but *relationally* the horizon of the political is fundamentally altered. Butler, for example, argues that “it is precisely by virtue of its relations to others that it is opaque to itself, and if those relations to others are precisely the venue for its ethical responsibility, then it may well follow that it is precisely by virtue of the subject’s opacity to itself that it sustains some of its more important ethical bonds.”² Schmitt’s subject lacks this sense of the opaque. Schmitt is more concerned with the establishment of order through the decision than examining the

¹ Judith Butler, ‘Giving an Account of Oneself,’ *Diacritics*, Vol. 31, No. 4, 2001, p. 22.

² *Ibid.*

ways in which *nomos* itself is attained. To summarise, Schmitt is concerned with order at the expense of the relations implicit in establishing this order.

For Schmitt, relationality matters inasmuch as it involves the phrasing of the political in terms of the friend-and-enemy grouping. A constitutive approach to the political proceeds neither through a formalist ethic (procedural accounts of liberalism) nor through a decisionist ethic (Carl Schmitt); instead, this approach stresses the ways in which the subject is constituted through politics. This constitutive approach can be summed up in the following question from Butler: “under what conditions do some individuals acquire a face, a legible and visible face, and others do not?”³

Recognizability is not merely a question of recognizing a shared humanity or understanding the origins and ends of agency but, more critically for Butler, it “is a language that frames the encounter, and embedded in that language a set of norms concerning what will and will not constitute recognizability.”⁴ This constitutive approach to the political stresses the intersubjective dimension to the subject, further debunking the unilateral notion of the subject in modern liberal thought. The subject cannot account for itself for the sole reason that “[n]o account take places outside the structure of address, even if the addressee remains implicit and unnamed, anonymous and unspecified.”⁵ The critical capacity of this understanding of the subject derives from the fact that it challenges the relations of mastery and dominion that are implicitly assumed to make the subject. “If I try to give an account of myself,” Butler claims, “if I try to make myself recognizable and understandable, then I might begin with a narrative account of my life, but this narrative will be disoriented by what is not mine, or what is not mine alone.”⁶

Butler calls into question the sovereign foundations of the subject. The subject should not be looked upon in Lockean terms, as the subject exercising mastery and dominion through productive labour, but constitutively in terms of the impossibility of determining

³ *Ibid.*, p. 23.

⁴ *Ibid.*, p. 24.

⁵ *Ibid.*, p. 26.

⁶ *Ibid.*

what is mine from what *belongs in common*. This way of looking at the subject involves a risky engagement with the political. Its being political derives from the fact that the story that the subject tells involves an implicit dyad between the subject and the Other.

To tell the story of oneself is already to act, since telling is a kind of action, and it is performed with some addressee, generalized or specific, as an implied feature of this action. So it is an action in the direction of an Other, but also an action that requires an Other, for which an Other is presupposed. The Other is thus in the action of my telling, and so it is not simply a question of imparting information to an Other who is over there, beyond me, waiting to know. On the contrary, the telling is the performing of an action that presupposes an Other, posits and elaborates the Other, is given to the Other, or by virtue of the Other, prior to the giving of any information.⁷

Whereas Alasdair MacIntyre in *After Virtue* mourns the death of the narrative unity of the subject, Butler embraces the rupturing of narrative coherence.⁸ This is because a limited subjectivity escapes the ethical dilemmas of a forceful (and forced) subjectivity – with its implicit violence. A limited subjectivity represents a new way of looking at subject formation and the institutional worlds inhabited by the subject. This has consequences for the way in which the subject interacts with the state. There is a tendency in modern political theory to endow the state with a concretized form. Carl Schmitt’s understanding of the modern state expresses itself through instrumental rationality.⁹ Contemporary state theory might be well served by thinking of the state in terms of Butler’s critical account of the subject.¹⁰ The concretization of the state – the turning of state form into a

⁷ *Ibid.*, p. 37.

⁸ Where MacIntyre claims that the unity of human life is made invisible when the individual is separated from the roles that he or she plays, Butler’s approach stresses the performativity of subject formation. For MacIntyre “the unity of a virtue in someone’s life is intelligible only as a characteristic of a unitary life, a life that can be conceived and evaluated as a whole.” Alasdair MacIntyre, *After Virtue*, (Notre Dame: University of Notre Dame Press, 1981), p. 191.

⁹ See, for example, where Carl Schmitt notes that “[t]he admirably perfected armature of a modern state and the complicated command mechanism of its administrative apparatus—the result of incredible technical inventions—requires a specific rationality, a form of command, and a plan expertly formulated and executed, signifying the transformation of legitimacy into legality and the divine, natural, or other prestate right into positive state law.” Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, (Westport: Greenwood Press, 1996), p. 67.

¹⁰ See, for example, where Carl Schmitt notes that “[t]he admirably perfected armature of a modern state and the complicated command mechanism of its administrative apparatus—the result of incredible technical inventions—requires a specific rationality, a form of command, and a plan expertly formulated and executed, signifying the transformation of legitimacy into legality and the divine, natural, or other

perfectible and administrative knowledge – has lost sight of the Hobbesian understanding of the sovereign as *homo artificialis*.¹¹ If, as Butler declares, suspending the demand for unified, whole subjects opens up a new horizon of ethics then could state systems themselves learn something from this? “Suspending the demand for self-identity or, more particularly, for complete coherence, seems to me to counter a certain ethical violence that demands that we manifest and maintain self-identity at all times and require that others do the same.”¹² The state or political community that aims at complete coherence – or complete democratic homogeneity in the Schmittian sense – is one whose conduct in the world is more likely to generate conditions for violence in the domain of the political.

Dropping the requirement for complete coherence would implicitly challenge the political objectives of both formalism and decisionism. The type of ethic that would emerge would not arbitrarily construct a universal narrative of human reason nor would it express itself violently through the language of necessity. Ethics would not rest on judgement and discrimination—in the sense of Gadamer—but would become an ethic of accounting for the posture, conduct and trajectory of different subjects within a state. “We sometimes move too quickly to summarize another’s life,” Butler declares, “and think that the ethical posture is, and must be, the one that judges, that can show not only that it can and will make judgements, but that it can justify the judgements that it makes.”¹³ Butler is not suggesting that ethics should drop the question of judgement; instead her concern is that judgements should always be provisionally embedded in strong doubt. When applied to the state, especially given the significance of the state in Schmittian ethics, this leads to a consideration of the contingent grounds of state theory and action. The state thereby has the potential to become more *reflexive* than currently allowable under current state practice.

Both decisionism and liberalism are predicated on the judging subject, a juridical practice by which the political expresses itself through mastery and dominion. The Rawlsian veil

prestate right into positive state law.” Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, (Westport: Greenwood Press, 1996), p. 67.

¹¹ *Ibid.*, p. 34.

¹² Judith Butler, ‘Giving an Account of One Self,’ p. 27.

¹³ *Ibid.*,

of ignorance emphasises the *choice of principles* by persons who are *similarly situated*.¹⁴ Schmitt's concept of the political looks to the sovereign to judge the critical case; sovereignty is *he* who decides: "The political entity is by its very nature the decisive entity, regardless of the sources from which it derives its last psychic motives. It exists or does not exist. If it exists, it is the supreme, that is, in the decisive case, the authoritative entity."¹⁵ Butler anticipates a new type of subject that challenges the unilateral image of the subject in both liberal and decisionist thought. For Butler, this entails questioning the relationship between conditions and acts: "Our acts are not self-generated, but conditioned."¹⁶

Mastery and dominion are the leading values of Schmitt's concept of the political. With the political expressed in terms of sovereignty—where 'supralegality' is defined as the chance to command obedience—Schmitt's ethic rewards heroic forms of conduct. For Butler, it would culminate in a radical politics of *hearing* rather than *acting*. Conduct forged through an ethic of *hearing* would provide an ethical framework to challenge the sovereign, juridical model associated with both formalism and decisionism. It would mean "hearing beyond what we are able to hear" as well as "being open to narration that decenters us from our supremacy."¹⁷ Schmitt's concept of the political does not encourage reflexive ethical thinking, preferring instead to devolve the decision to the sovereign entity. Foremost in Schmitt's thinking about the political is how the decision establishes the right conditions for action.¹⁸

¹⁴ John Rawls, *A Theory of Justice*, (Oxford: Oxford University Press, 1973), p. 12.

¹⁵ Carl Schmitt, *The Concept of the Political*, p. 44.

¹⁶ Butler is not just making a constructivist claim about the formation of the subject through social worlds; rather the attempt is to challenge the notion of individual responsibility by claiming that subjectivity arises out of social worlds. Responsibility is an important theme for Butler. She argues that "we are acted upon and acting, and our "responsibility" lies in the juncture between the two. What can I do with the conditions that form me? What do they constrain me to do? What can I do to transform them? Being acted upon is not fully continuous with acting, and in this way the forces that act upon us are not finally responsible for what we do. In a certain way, and paradoxically, our responsibility is heightened once we have been subjected to the violence of others. We are acted upon, violently, and it appears that our capacity to set our own course at such instances is fully undermined." Judith Butler, 'Explanation and Exoneration, or What We Can Hear,' p. 187.

¹⁷ *Ibid.*, p. 188.

¹⁸ See, for example, where Schmitt discusses the difference between a normal situation and the state of the exception. The exception is characterised in terms of the discourse of war. The right conditions for actions are determined in advance of the subject who executes the decision: "War has its own strategic, tactical, and other rules and points of view, but they all presuppose that the political decision has already been made

Politics without mastery and dominion, dispossessed of its juridical ethic, would not take sovereignty as the central concern of political thought. “*Who decides?*” would be replaced with the cautious questioning of the dimensions of modern subjectivity: “What can I do with the conditions that form me? What do they constrain me to do? What can I do to transform them?”¹⁹ To allow this form of questioning requires the willingness of the subject to think about how subject positions are inscribed in exclusion. Saying that the enemy ‘completes me’ is to acknowledge, along with Schmitt, the capacity of the enemy to generate the political. But, unlike Schmitt, this juridical formula is contested in the current work. Difference requires neither *toleration* (in the liberal model) nor *negation* (in the Schmittian model) but a radical ethic of understanding.²⁰ For Butler, the primary blockage to such an understanding of the Other is a “a deeper fear that we will be taken up by it, find it is contagious, become infected in a morally perilous way by the thinking of the presumed enemy.”²¹

Butler documents the inability of the subject to move beyond the first person narrative, in which the ‘I’ of discourse assumes mastery over all other ethical registers.²² The critical capacity of Butler’s notion of the subject is that it looks beyond the sovereign model of the subject developed throughout liberal thought. In addition, this approach to the subject challenges the inherent logic of violence present in the Schmitt’s linkage of the political

as to who the enemy is. In war the adversaries most often confront each other openly; normally they are identifiable by a uniform, and the distinction of friend and enemy is therefore no longer a political problem which the fighting soldier has to solve.” Carl Schmitt, *The Concept of the Political*, p. 34.

¹⁹ Judith Butler, ‘Explanation and Exoneration, or What We Can Hear,’ p. 187.

²⁰ Étienne Balibar presents an interesting discussion on the relationship between difference, negation and citizenship. Balibar argues that “*it is always the practical confrontation with the different modalities of exclusion ... that constitutes the founding moment of citizenship.*” Étienne Balibar, *We, The People of Europe?*, (Princeton: Princeton University Press, 2004), p. 76.

²¹ *Ibid.*, p. 181.

²² Butler expresses this in terms of the inability of the subject to think beyond the specifics of their own narrative. She expresses the logic of the international system as dominated by this first person narrative. This means that “[w]e have to shore up the first-person point of view, and preclude from the telling of accounts that might involve a decentering of the narrative “I” within the international political domain. This decentering is experienced as part of the wound that we have suffered, though, so we cannot inhabit that position. This decentering is precisely what we seek to rectify through a recentering. Our response, accordingly, is not to enter into international coalitions where we understand ourselves to be working with institutionally established routes of consensus building.” Judith Butler, ‘Explanation and Exoneration, or What We Can Hear,’ p. 180.

to the decision. Both liberalism and decisionism are predicated on the politics of mastery and dominion. They share an outlook that positions antagonism as the primary dilemma of their respective accounts of the political. Antagonism forces the liberal to embrace procedurally grounded reason, instituting the right rules to deal with the politics of difference. The decisionist, with Schmitt the primary focus in the current work, uses antagonism as means of justifying the homogeneity of political community and the exception becomes the tool by which the work of the political is achieved.

A key theme of the current work concerns the way in which the political is constituted through an ethic of mastery and dominion, opening up the subject only by foreclosing other subjects. This ethic of mastery and dominion is present in Schmitt's claim that "the substance of the political is contained in the context of a concrete antagonism."²³ Schmitt's desire to establish an *autonomous* concept of the political—one which speaks on its own terms, not in terms of another discourse—presumes that the entity that gives the political its specificity, the enemy, can be grounded empirically. Derrida disputes the very possibility of constituting the enemy as a real; that is to say, Schmitt's autonomous account of the political establishes the limits of the political in presenting the enemy as a concrete relation. For Derrida, on the other hand, the enemy can never be found *concretely*: "As a result, the purity of *pólemos* or the enemy, whereby Schmitt would define the political, remains unattainable."²⁴ This means that Schmitt's concept of the political is inadequate:

The concept of the political undoubtedly corresponds, as concept, to what the ideal discourse can want to state most rigorously on the ideality of the political. But no politics has ever been adequate to its concept. No political event can be correctly described or defined with recourse to these concepts. And this inadequation is not accidental, since politics is essentially *praxis*, as Schmitt himself always implies in his every-so-insistent reliance on the concept of *real*, *present possibility* or *eventuality* in his analysis of the formal structure of the political.²⁵

²³ Carl Schmitt, *The Concept of the Political*, p. 30.

²⁴ Jacques Derrida, *Politics of Friendship*, (London: Verso, 1997), p. 114.

²⁵ *Ibid.*

The very ideal of a concept of the political that can be understood autonomously, without drawing upon other domains, is something that the current work has contested. Neither Schmitt's decisionism, nor liberal formalism, can emplace the political within a stable field of meaning without a background suspicion that politics could be something different. Derrida draws this out in his claim that "the inadequation to the concept [the political] happens to belong to the concept itself."²⁶ For this reason, Schmitt's account of the political should be understood in strategic terms, aiming at the colonisation of discourse in the attempt to establish the autonomous basis of the political.²⁷ Derrida is concerned with the performativity implicit within a polemical account of the political. Schmitt is performing an ideal of the political, amplifying one particular narrative of politics through the supposed universality of the friend-and-enemy grouping. Consequently, Schmitt presents a spectre of the workings of the political not the political itself. But at the same time Derrida notes that there are consequences of thinking of the political in Schmittian terms. The consequence of Schmitt's friend/enemy distinction, Derrida argues is that "you may very well live something other than politics, or, if you will, beyond politics, and you may love your (political) enemy; but you will not love him politically, you will love him from another angle: as friend, lover, neighbour, human being – the political should not be confused with something else, etc.); sometimes the political, *qua real possibility*, invades the entire fundamental or grounding stratum of existence, whether individual or communal."²⁸

Schmitt's concept of the political culminates in the *hyper-politicization* of politics according to Derrida.²⁹ If we are to understand the concept of the political autonomously, as requested by Schmitt, then there is a danger of over-determining the world in terms of this concept of the political. Derrida notes that Schmitt's "fundamentalist stratification makes the political *at once* both a regional stratum, a particular layer, however grounding the layer is, *and* the supplementary or overdetermining determination cutting through all

²⁶ *Ibid.*

²⁷ Derrida argues against Schmitt in claiming that he "tirelessly claims *concrete*, living and relevant pertinence for the *words* of political language. Among these words, first and foremost for the word 'political.' These vocables must not and cannot remain, in their 'ultimate consequence', the correlate of ideal or abstract entities." *Ibid.*, pp. 114-115.

²⁸ *Ibid.*, p. 125.

²⁹ *Ibid.*, p. 129.

other regions of the human world or of the cultural, symbolic, or ‘spiritual’ community.”³⁰

7.3 The exception *is not* the enemy of the norm

This thesis does not aim at the substitution of a juridical account of the political with a non-juridical account of the political. What it does advance, in calling for an awareness of the juridical ethic at work in Schmitt’s concept of the political, is how it is that orders of thought provide a script for making sense of political conduct and knowledge. Schmitt’s focus on the exceptional conditions of the political involves the privileging of the exception above the norm. Schmitt looks to the exceptional as the embodiment of the political. This dichotomous approach to the political overlooks the dynamic relationship between exception and norm.

Giorgio Agamben brings to the fore the relation between the state of exception and a juridical order. In asking whether the exception has a foundation with a legal order Agamben does not endorse a Schmittian ethic in which the exception will always trump the norm. The question of whether the exception can be regulated has significant consequences for democratic theory, pushing an approach based on pure constitutionalism to consider the point at which norm and exception collide. If Schmitt was concerned with the conditions under which a normal order can be suspended, involving the chance to compel obedience, then Agamben is concerned with the capacity of the exception to be regulated. Whereas Schmitt thinks the exception above law (as his account of *supralegality* discloses) Agamben wants to give due consideration to the boundaries between the exception and the rule. In this endeavour, Agamben specifically warns against thinking of the exception as the suspension of law for the reason that the exception is relational to the juridical order itself. For Agamben, the “state of exception is not a special kind of law (like the law of war); rather, insofar as it is a suspension of the juridical order itself, it defines law’s threshold or limit concept.”³¹ Paying attention to the boundaries between the exception and a legal order provides a new way of looking at juridical order. “Only if the veil covering this ambiguous zone is lifted,” Agamben

³⁰ *Ibid.*, p. 125.

³¹ Giorgio Agamben, *State of Exception*, (Chicago: Chicago University Press, 2005), p. 4.

declares, “will we be able to approach an understanding of the stakes involved in the difference—or the supposed difference—between the political and the juridical, and between law and the living being.”³²

Like Butler and Mouffe, Agamben endows the borderline case with ethical significance. Schmitt is a useful thinking in considering the relationship between the exception and the norm because he assumes that the borderline case reveals more about political life than the norm itself. Nonetheless, there is value in examining the synergy between norm and exception. A critical theory of the exception would not endorse the Schmittian distinction between exception and norm, legality and illegality, friend and enemy. This is because the exception emerges from the norm, involving a prior awareness of the norms of order and security that are valued by any given political community.

Agamben seeks to demonstrate the exception so that it is not associated with the suspension of law but conceived in terms of the extension of law. In this respect, Schmitt’s account of the exception should not be understood as the rejection of law or juridical thought but its continuation:

The simple topographical opposition (inside/outside) implicit in these theories seems insufficient to account for the phenomenon that it should explain. If the state of exception’s characteristic property is a (total or partial) suspension of the juridical order, how can such a suspension still be contained within it? How can an anomie be inscribed within the juridical order? And if the state of exception is instead only a *de facto* situation, and is as such unrelated or contrary to law, how is it possible for the order to contain a lacuna precisely where the decisive situation is concerned? And what is the meaning of this lacuna?³³

Thinking of the exception as lacuna, the legal void when law and constitution reach their limit point, does not sufficiently reflect the way in which the exception is embedded in a normal order of law. The exception is not a *sui generis* situation; the exception is constituted through established traditions of law and politics. The fact that the exception

³² *Ibid.*, p. 2.

³³ *Ibid.*, p. 3.

can disturb the stability of a legal and/or political order is evidence of the permeable relationship that exists between law and politics. Agamben is correct in drawing attention to the normative foundations of the exception, where Schmitt emphasises *anomie* Agamben looks to the norm:

In truth, the state of exception is neither external nor internal to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with each other. The suspension of the norm does not mean its abolition, and the zone of *anomie* that it establishes is not (or at least claims not to be) unrelated to the juridical order.³⁴

The discussion of the relation between the state of exception and normal regimes of law and politics is whether the norm is shattered in the exception or whether, in fact, the norm carries on through the exception. For Agamben, the exception expresses itself through a normative order. Thinking of the exception as the suspension of all prior norms, a condition of *anomie*, disregards the fact that Schmitt's exception is always bound up in the establishment or preservation of an order or *nomos*. That the exception is the only choice for a state or constitution or political community subject to both internal and external threat is contested by Agamben. Schmitt's exception is necessitarian; an entity capable of supralegality is a precondition for order, this entity must both command and protect. If Schmitt's exception was truly exceptional then it would not draw upon the narrative of the modern state, with its necessitarian logic of protection and obedience. That the exception is phrased in terms of necessity is strongly rejected by Agamben. This is because the exception is not a pure fact but, on the contrary, "undecidable in fact and law."³⁵ The exception does not suspend law because the horizon of choice has disappeared, rather the exception suspends law in the name of a prior normative outlook. This normative outlook is constituted through fiction rather than pure fact:

Far from being a response to a normative lacuna, the state of exception appears as the opening of a fictitious lacuna in the order for the purpose of safeguarding the existence of the norm and its applicability to the normal situation. The

³⁴ *Ibid.*, p. 23.

³⁵ *Ibid.*, p. 30.

lacuna is not within the law [*la legge*], but concerns its relation to reality, the very possibility of its application. It is as if the juridical order [*il diritto*] contained an essential fracture between the position of the norm and its application, which, in extreme situations can be filled only by means of the state of exception, that is, by creating a zone in which application is suspended, but the law [*la legge*], as such, remains in force.³⁶

The fictitious lacuna of the exception involves the use and/or threat of violence, its work is achieved through force. “The essential point,” Agamben notes, “is that a threshold of undecidability is produced at which *factum* and *ius* fade into each other.”³⁷ Legal order is therefore conceived in terms of force, establishing the characteristic juridical traits of mastery and dominion. Law is constituted through force; law should not be thought of as pure factuality (that which has been codified within a constitution) but as fiction backed up through force.³⁸ For Agamben to talk of the force-of-law is to question the juridical framing of law in terms of a codified system of value. The efficacy of law is not bound up in legal definition but the capacity of law to establish itself as a value above all other values. That law is constituted through force—not factuality or conceptions of truth—means that law achieves mastery over all other discourses. But where Agamben thinks of law in terms of juridical prohibitions, often constituted fictionally, Schmitt treats prohibition as the *sine non qua* of legality in the domain of the political.

This emphasis on law as fiction provides a mechanism by which the Schmittian naturalistic fallacy—where law is turned into an absolute doctrine of right—can be reconstituted. In seeking to identify the topology of the exception Agamben disputes a fundamental premise of Schmittian legal theory which regards the regulation of the exception as peculiarly misguided (in the case of liberal constitutionalism) and/or risky (in the case of cosmopolitanism). Agamben defines the state of exception as “a space devoid of law, a zone of anomie in which all legal determinations—and above all the

³⁶ *Ibid.*, p. 31.

³⁷ *Ibid.*, p. 29.

³⁸ See, in particular, where Agamben argues that “[b]ehind the syntagma *force of law* stands a long tradition in Roman and medieval law, where (at least beginning with Justinian’s *Digests*, *De Legibus*, 1.7: *legis virtus haec est: imperare, vetare, permittere, punire* [The capacity of law is thus: to command, to forbid, to allow, to punish] it has the generic sense of efficacy, the capacity to bind.” *Ibid.*, p. 37.

very distinction between public and private—are deactivated.”³⁹ Agamben’s emphasis on the state of exception as an anomic space is not shared in the current work. If the exception is endowed with *topos* then it ceases to be an anomic space and becomes a constitutive space: constituted through the horizon of the present, rather than derived from the miracle in theology. Norms *do* exist in the state of exception and these norms are exceptional because they refer back to a prior, partially suspended, or suspended legal order. To label the state of exception an anomic state is to allow for the constitutive foundations of the exception to be overlooked. Agamben does, nonetheless, challenge the notion that the exception lacks a topology. In this respect, his reflections on the exception differ from Schmitt who relates the exception to the miracle (*ratio*). But rather than think of the exception as a space devoid of substantive legal content, as an anomic space, there is value in thinking of the exception as the continuation of a particular regime by other means. Exceptions to the rule do not emerge from *anomie* but, on the contrary, are generated from within an existing constitutive order.

Agamben is correct, nonetheless, in speaking of law in terms of a juridical ethic validated through force and violence. The fact that law, whether normal or exceptional, is able to determine the field of possibility within a political community is primarily because it is underwritten by force. This leads Agamben to claim that the exception is a force, endowed with legal reasoning, but operating outside the conventions of law. Under a normal regime, law is law; under the exceptional regime, law is ~~law~~. For this reason, Agamben seeks to challenge the binary logic implicit in the Schmittian account of the exception. The juridical order should not be understood as either operating ‘normally’ or ‘exceptionally.’ Agamben thinks that Schmitt is wrong to divide the world into two ways of thinking, where norm and decision are looked upon as the very antithesis of each other.⁴⁰ In this regard, Agamben frustrates the inner logic of Schmitt’s autonomy thesis. Criticising the fixity of Schmitt’s norm/exception distinction thereby allows for the reconstitution of the logic of the friend-and-enemy grouping. Schmitt superimposes the norm/exception distinction onto the friend-and-enemy grouping. This means that the

³⁹ *Ibid.*, p. 51.

⁴⁰ *Ibid.*, pp. 50-51.

friend becomes the embodiment of the norm and the enemy becomes the justification of anything exceptional.

Thinking of the exception as the struggle for *anomie* rather than a condition of pure *anomie* itself means that the essential contestability of the juridical order can be apprehended. What is at stake is not just whether something exists when the exception has suspended law (whether fully or partially) but, more critically, how it is that the exception is constituted through force so that it does its juridical work without taking the name of law. It is the implicit or explicit use of force that gives the exception its norm. Disputes over the exception can thereby be understood as embodying two ways of looking at the world; a strict formalist approach to law (where law is the codification of value) and a contextualist approach to law (where law expresses a temporary condition of legality). These two ways of thinking involve a dispute over the value of *anomie*: “The dispute takes place in a zone of *anomie* that, on the one hand, must be maintained in relation to the law at all costs and, on the other, must be just as implacably released and freed from this relation. That is to say, at issue in the anomic zone is the relation between violence and law—in the last analysis, the status of violence as a cipher for human action.”⁴¹

7.4 Constitutive politics *not* juridical politics

Carl Schmitt is a thinker for whom the authoritative entity, sustained through an ethic of mastery and dominion, plays the primary role in determining the nature of the political. What emerges is a concept of the political that is so resolute on establishing the *differentia specifica* of the political that it lacks awareness of the reflexive conditions of political judgement. Such a reflexive ethic would pay attention to the way in which law and politics are constitutively intertwined.

This reflexive ethic is present in Judith Butler’s analysis of power and hegemony within political community. Looking to Laclau and Mouffe she argues that “democratic polities are constituted through exclusions that return to haunt the polities predicated upon their

⁴¹ *Ibid.*, p. 59.

absence. That haunting becomes politically effective precisely in so far as the returned of the excluded forces an expansion and rearticulation of the basic premises of democracy itself.”⁴² The important thing to note is that Butler locates political efficacy not in the original site of exclusion—reflecting the juridical model of mastery and dominion—but in the reconstitution of that site in ways less harmful to the subject. This means thinking of the political not as the domain in which politics is conducted, reflecting a behavioural methodology, but as the ways in which the site of original exclusion can be reformed in less harmful ways. This constitutive approach shuns a formalist approach to politics and law in favour of one which takes cultural translation as a basis for thinking about the limits of politics. Cultural translation “exposes the limits of what the dominant language can handle” by drawing attention to the ways in which language simultaneously enables and forecloses the subject.⁴³

A central theme in the current work has been the need to contest the limits of politics that are established through a juridical approach to the political. A juridical ethic freezes a particular regime of politics, relegating the excluded subject to a permanent zone of exclusion. The problem with a juridical concept of the political is that it pays little attention to the constitution of the subject, especially how the subject exists as a *political* subject. Both Schmitt, as well as proceduralists, have an image of the subject in which the real test of political efficacy is to determine the world. The generic rendering of the subject in Rawls, as a Kantian being endowed with free and equal choice, explicitly disentangles the subject from her multiple subject positions. Deliberating about the conditions of justice from the original position assumes that *men* can through “social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits.”⁴⁴ Likewise, Schmitt’s political subject is one who can achieve mastery and dominion above all others and, in so doing, achieve recognition as *the* sovereign.

⁴² Judith Butler, ‘Restaging the Universal: Hegemony and the Limits of Formalism,’ in Judith Butler, Ernesto Laclau and Slavoj Žižek (eds.), *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left*, (London: Verso, 2000), p. 11.

⁴³ *Ibid.*, p. 37.

⁴⁴ John Rawls, *A Theory of Justice*, p. 10.

A reflexive approach to the political would critically examine the foundations of subjectivity and relate this to an awareness of the unequal nature of mastery and dominion within political community. It would implicitly reject an account of the world in which political subjects are treated as normatively or morally equally. “There are still some political theorists,” Butler argues, “who want to know what politically relevant features of human beings might be extended to all human beings (desire, speech, deliberation, dependency), and then to base their normative view of what a political order ought to be on that universal description.”⁴⁵ The Habermasian notion of “ideal speech” and the Rawlsian “veil of ignorance” presuppose the existence of a prior narrative of reason which is endowed with truth status. The existence of a prior truth is at the core of the formalism of both Habermas and Rawls. This truth is constituted through a realm of exclusion as Benhabib identifies:

Habermas has attempted to reestablish the link between Enlightenment and emancipation, and to bring the project of emancipation into the light of the public by going back to the Enlightenment legacy of practical reason. His project requires fulfilling the universalistic promise of social contract and consent theories which, since the 17th century, have always limited such universalism on the basis of sex, class, race and status distinctions.⁴⁶

This universalism only represents a partial experience of emancipation. It involves the hegemonic expression of power rather than the rearticulation of new stories of emancipation. By being bound up in the objectives of formalism it overlooks the actual life of power and its capacity to both enable and foreclose the subject. The formalist solution to the problem of the political cannot come to terms with the shifting matrix of power relations. This is because the adjudicatory mechanism established by formalism is embedded in a principle of neutrality. Neutral adjudication is deficient for the reason that it freezes time (meaning that the decision rearticulates prior exclusionary norms) and space (meaning that the decision rearticulates hegemonic subject positions). Focussing on the borderline case, whether in terms of the exception or the supreme emergency, reveals the falsity of thinking of juridical order as embedded in neutrality. A juridical order is

⁴⁵ Judith Butler, ‘Restaging the Universal: Hegemony and the Limits of Formalism,’ pp. 14-16.

⁴⁶ Seyla Benhabib, ‘The Utopian Dimension in Communicative Ethics,’ *New German Critique*, No. 35, (Spring-Summer, 1985), p. 85.

instituted through power relations, with violence at its core. Since the exception is conceived in terms of *anomie*—the lack of norms—it means that violence becomes the way in which order (*nomos*) can be reinstated. But the problem with this juridical concept of law, largely Schmittian in outlook, is that it fails to look at the exception as the continuation of a juridical order by other means. The fact that the exception is conceived by Schmitt in terms of supralegality—the chance to compel obedience—means that law becomes the means by which the sovereign entity can exercise mastery and dominion in the domain of the political.

In rejecting a juridical approach to the political the purpose has been to underscore, along with Butler and Mouffe, the way in which ‘the political’ is constituted through a process of exclusion. To wager a theory of politics on the existence of some type of original position—whether expressed in terms of justice, freedom, rights, duties etc—is to think that the constitutive relations of life can be suspended at will. Just as there was no ‘state of nature’ as documented by Hobbes, there can be no ‘original position’ or ‘ideal speech’ as requested by Rawls and Habermas. Our being human (having the status of a human being) arises from the practices by which actors inscribe meaning on other actors. Butler’s account of bare life, the life that cannot be mourned because it would presuppose a life that was intersubjectively valued, suggests that the existence of an originary state (where *all* are equal) is not possible within the current constitutive horizons.

In seeking to inscribe the political in a framework which moves beyond the juridical—power that *enables* and *disables* the subject—the intention has been to draw attention to the dilemma facing both defenders of formalism and decisionism in contemporary political thought. This dilemma arises out of the relations of mastery and dominion that are formative assumptions of both approaches. The liberal approach, in pursuing a regulatory ethic in relation to conduct, presumes that constitutive power relations can be suspended at will. Political theory becomes the means by which a system can extract itself away from power by instituting either a procedural or legal fix. The decisionist approach, as embodied in the political and legal theory of Carl Schmitt, is mastery and dominion at an extreme and spectral level. Lacking any regulatory safeguards, the

political becomes the means by which a legal order (*nomos*) can be established given the inherent *anomie* of the world.

The problem with a juridical approach to the political is that it lacks an awareness of the contexts that shape the exception. It presupposes that in the exception, when a decision must be made, that there is no normative order that can be drawn upon in shaping the decision. The exception is *anomie*, without any consideration of the lives that endure in this exceptional state. This juridical approach involves a necessitarian claim about the need for exclusionary forms of political order: failure to exclude the Other from the political community means that the political order itself is endangered. Both approaches—the liberal and the decisionist—establish the juridical as the master of political knowledge and conduct. Where liberalism values the rule, decisionism values the capacity of the sovereign entity to command. These supposedly rival accounts of the political reward mastery and dominion, albeit in different ways. Moving beyond the juridical would involve the renegotiation of the relationship between law and politics:

Politics has suffered a lasting eclipse because it has been contaminated by law, seeing itself, at best, as constituent power (that is, violence that makes law), when it is not reduced to merely the power to negotiate the law. The only truly political action, however, is that which severs the nexus between violence and law. And only beginning from the space thus opened will it be possible to pose the question of a possible use of law after the deactivation of the device that, in the state of exception, tied it to life.⁴⁷

This would involve dispossessing law and politics from its requirement of force and violence; neither *command* nor *prohibition*, neither *mastery* nor *dominion*. Law would cease to be the juridical expression of the political but would become the means by which subjects become aware of the boundaries or limits of other subjects. Agamben expresses this in his desire that law will one day cease to be the primary articulation of the political; whether a means to establish order (*nomos*) in the state of the exception or whether as a regulatory mechanism by which liberal-democratic principles are attained:

⁴⁷ Giorgio Agamben, *State of Exception*, p. 88.

One day humanity will play with law just as children play with disused objects, not in order to restore them to their canonical status but to free them from it for good. What is found after law is not a more proper and original use value that precedes the law, but a new use that is born only after it. And use, which has been contaminated by the law, must also be freed from its own value. This liberation is the task of study, or of play. And this studious play is the passage that allows us to arrive at that justice that one of Benjamin's posthumous fragments defines as a state of the world in which the world appears as a good that absolutely cannot be appropriated or made juridical.⁴⁸

In anticipating political thought without the juridical—dispossessed of relations of mastery and dominion—multiple rather than singular expressions of the political are now possible. This is because the political is released from the requirement of being authoritative but can be understood in terms of how it is that concepts of the political structure specific political subjectivities. Expelling the juridical from the political is not simply a matter of turning politics into the positive production of power (in the sense of Foucault) but a refusal to allow the continued hegemony of the juridical over both law and politics. The political should not be understood as the autonomy of the political over all other domains of knowledge, conduct, and experience. Releasing the political from the requirement of mastery and dominion would mean that the constitutive patterning of the subject takes primary place in political thought. “*What is politics?*” becomes less important to the question of “*Who is authored in the name of the politics? Who is deauthored in the name of politics?*”

This reflexive approach to the political will please neither liberals nor decisionists. It is for this very reason that moving beyond the juridical can unleash life into politics rather than politics causing real harm to life. Schmitt's juridical rendering of the political pushes the political into an ethically ambiguous realm where ethics is the very antithesis of politics. Its autonomy claim, as has been argued in the main body of the current work, represents the desire of the juridical to colonise all other non-juridical forms of discourse. If politics is the expression of law by other means then the subject, notably the excluded subject, is held hostage to a state of permanent alterity. A non-juridical approach to the political takes alterity as the primary dilemma of politics, rather than treating difference

⁴⁸ *Ibid.*, p. 64.

as an object to removed from politics (in the case of Schmitt) or rendered into procedural form (in the case of Rawls and Habermas). For this reason, moving beyond the juridical as the designator of all things political allows for new forms of subjectivity. This concept of the political does not yet exist, but its critical articulation in the horizon of the present gives new hope for the capacity of the political to escape the shared regime of mastery and dominion.

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